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METROPOLITAN BUILDING ACTS

BANISTER FLETCHER

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THE
METROPOLITAN BUILDING ACTS :
A TEXT-BOOK
FOR
ARCHITECTS, SURVEYORS, BUILDERS, &c.

THE
METROPOLITAN BUILDING ACTS:

A TEXT-BOOK

FOR

ARCHITECTS, SURVEYORS, BUILDERS, &c.,

COMPRISING

THE ACT 18 & 19 VICT. CAP. 122 (1855),

WITH THE MOST RECENT LEGAL DECISIONS:

TOGETHER WITH

THE AMENDMENT ACT 1878, AND THE BYE-LAW PASSED OCT. 1879:

ALSO

**THE GENERAL ORDERS PUBLISHED IN 1880 BY THE
METROPOLITAN BOARD OF WORKS,**

WITH

**THE RULES AND REGULATIONS NOW IN FORCE, AND THE MOST RECENT
INFORMATION AS TO LIABILITY IN RESPECT OF THE PAVING OF
NEW STREETS, AND THE LOCAL MANAGEMENT ACTS,**

ALSO THE

METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1882.

ILLUSTRATED WITH NUMEROUS PLATES,

**SHOWING THE THICKNESS OF WALLS, PLANS OF CHIMNEYS, SHOP FRONTS, OPENINGS AND RECESSES
PERMITTED IN PARTY AND EXTERNAL WALLS, HOW MUCH PARTY WALL MUST BE ON RESPECTIVE
OWNER'S LAND WHERE OWNERS ARE BUILDING DIFFERENT CLASS OF BUILDING, THE
WALLING NECESSARY IN CERTAIN CASES OF LIGHTS IN ROOFS, ETC.**

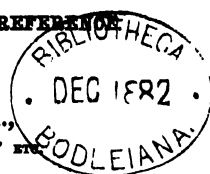
ALSO

PART I. OF THE ACT, IN TABULATED FORM, FOR EASY REFERENCE

BY

BANISTER FLETCHER, F.R.I.B.A.,

AUTHOR OF 'QUANTITIES,' 'LIGHT AND AIR,' 'DILAPIDATIONS,' ETC.



LONDON:

B. T. BATSFORD, 52, HIGH HOLBORN.

1882.

PREFACE.

IT is many years since any edition of the "Metropolitan Building Act" has been published, which, besides giving an abstract of the Act, notes of legal cases, &c., was further elucidated by diagrams showing thicknesses of walls, plans of chimneys, &c.; and these now being not only "out of print," but also obsolete in consequence of recent additional Acts of Parliament, my Publisher, believing that such an edition, prepared by a District Surveyor, would be well received by those who most use the Act, has asked me to undertake it; and having most of the necessary materials at hand—as, for instance, the Abstract of the Act in tabular form, which I have had in use for some years with advantage—I have, notwithstanding the pressure of my business, agreed to do so, and having put my hand to the plough, have tried hard to make this work, what I am glad to say my others have become, the Text Book on the subject.

In conclusion, I have to acknowledge my indebtedness to Mr. Charles Fowler, to Professor T. Roger Smith, Mr. John Hebb, and many District Surveyors for their assistance.

BANISTER FLETCHER.

29, NEW BRIDGE STREET, BLACKFRIARS,
August 1882.



INTRODUCTION.

I do not propose going into the history of the various Building Acts, the first of which dates as far back as the year 1667 ; for, while such retrospective matter is pleasing to the student, the practical man cares little for such information, and wants to know in the fewest possible words what the present Act is ; and a work on this subject, to be a useful guide, must comprehend all the Amendment Acts and so much of the Bye-laws as is necessary.

For rapid references I have given Tables under the different headings, containing an abstract of Part I. of the Act, and in the margin have put the section and subsection, so that, while reading the Table, and in case of any doubt, the text of the Act itself may be at once referred to.

It will be found that I have given all the recorded cases to present date ; and on the most important subjects, as, for example, "What is a building ?" and "Party walls" I have given the decisions *in extenso*.

With the recent Bye-laws will be found the legal decisions. At page 160 will be found the rules and regulations for applications to the Board.

At page 166 will be found the Metropolis Management and Building Acts Amendment Act, 1882.

At page 139 the Bye-laws relating to the formation of new streets in the Metropolis.

At page 130 the Bye-laws relating to foundations and sites,

duties of District Surveyors, description and quality of the substance of walls, deposit of plans and sections, penalties.

As nothing is more worrying than having to refer from section to section, and page to page, and to foot-notes, to find all the information that relates to the same matter, I have in the following pages endeavoured to avoid this by bringing all the information closely together; as, for example, if the reader will turn to page 49 he will there find not merely the sections giving the dimensions and all the restrictions, but all the legal cases bearing upon the subject.

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ABSTRACT

OF THE

METROPOLITAN BUILDING ACT, 1855,

AND

SUBSEQUENT ACT.

TABLE I.

CHIMNEYS AND FLUES.	
Outside of chimneys on corbels above level of ceiling of ground floor must not exceed in projection thickness of wall	Sec. XX. sub-sec. 1.
All other chimneys must be on solid foundations with footings similar to footings of wall	" " " "
Chimneys and flues having soot-door not less than 6 inches square may be at any angle, all others not less obtuse angle than 130°, and to be properly rounded	" " " 2.
An arch or bar of wrought iron to support breast; and if breast projects more than 4½ inches, and jamb is of less width than 17½ inches, abutment must be tied in by an iron bar or bars turned up and down at ends and built into jambs at least 8½ inches	" " " 3.
Inside of flue and back or outside parged, except back forms external wall ..	" " " 4.
Jambs to be at least 8½ inches breast front, with the partition and back of flue at least 4½ inches thick	" " " 5.
Back of every chimney opening from hearth to 12 inches above mantel, at least 8½ inches if party wall, if not party wall 4½ inches	" " " 7.

Thickness of upper side of every flue, when angle of less than 45°, must be 8½ inches	Sec. XX. sub-sec. 8.
Shafts at least 4 inches to a height of not less than 8 feet above roof, flat or gutter measured at highest point of juncture	" " " 9.
No shaft higher above roof, flat, or gutter, and from highest point than six times the least width, unless built with and bonded with another shaft not in same line or otherwise rendered secure *	" " " 10
Hearths 12 inches longer than opening, 18 inches wide in front of breast, to be placed on stone or iron bearers or brick trimmers. Basement may be bedded on solid ground	" " " 11.
Hearth bedded on incombustible material, and shall be solid for a thickness of 7 inches at least	" " " 13.
No flue to be built against party structure unless a withe is secured thereto at least 4 inches in thickness	" " " 14.
No chimney breast or shaft to be cut away unless District Surveyor certifies, &c.	" " " 15.
Chimney shaft, jamb, breast, or flue can only be cut into for three purposes	" " " 16.

TABLE II.

RECESSES AND OPENINGS.

<i>External Walls.</i> —Backs of recesses not less than 8½ inches	" XIII. " 1.
Area of both not exceeding half whole area of wall	" " " 2.
<i>Party Walls.</i> —Backs of recesses not less than 13 inches	" " " 1.
Every recess to be arched	" " " 2.
Area not to exceed half of whole area	" " " 3.
No recess to come within 1 foot of inner face of external wall.	
No opening except in conformity with this Act.	
<i>Definition</i> of area means area of vertical face.	

* Except steam-engines, factory, distillery, or brewery.

TABLE III.

ROOFS.

Every part of covering must be incombustible except doors and windows and their frames of dormers, turrets, lantern lights, skylights, or other erections ..	Sec. XIX. sub-sec. 1.
If building used for trade or manufacture, the roof shall not incline from external or party wall upwards at a greater angle than 47° with the horizon	" " " 2.

TABLE IV.

EXTERNAL WALL.

Loop-hole frames may be 1½ inches from face	" XIV.
Other 4 inches from face except breasummers, story posts, shop doors, and windows	" "
Breasummers 4 inches bearing at each end upon brick stone or timber or iron story post, fixed on a solid foundation in addition to its bearing on any party wall	" XV. " 1.
The ends shall not be nearer than 4 inches to centre of party wall	" " " "
If any gutter or part is formed of combustible materials, then such wall to be carried up and form parapet at least 1 foot above highest part	" XVI.
Parapet at least 8½ inches from level of underside of gutter plate	" "

TABLE V.

ARCHES UNDER PUBLIC WAYS.

Incombustible.	
Span not exceeding 10 feet, 8½ inches.	
Span not exceeding 15 feet, 13 inches.	
Beyond, as District Surveyor may direct.	" XXV.
If over public way—	
Incombustible.	
Where span not more than 9 feet, 4½ inches thick. Exceeding 9 feet, 8½ inches ; other materials as District Surveyor may approve	" XXIV.

TABLE VI.

PARTY WALLS.

No bond timber or wood plates, the ends of all beams and joints at least 4½ inches from centre of wall.	Sec. XV. sub-sec. 2.
Bressummer bearing on such wall must be borne by a templet of stone or iron tailed through at least half thickness of such wall and of full breadth of bressummer	" " " 3.
Above roof to be carried 15 inches above highest part, measured at right angles of slope of roof. If dormer, &c., within 4 feet from this wall, wall shall extend at least 12 inches higher and wider. If roof within 4 feet, then this wall shall go above	" XVII.
No chase wider than 14 inches nor deeper than 4½ inches, nor leave less than 8½ inches thick, nor be within 7 feet of another chase	" XVIII.

TABLE VII.

WHAT CONSTITUTES A NEW BUILDING.

If old building taken down to extent exceeding half measure in cubic feet, must be rebuilt entirely as if new . .	" X.
Old buildings separated by partitions, if such partitions removed to extent of half, must then be divided according to this Act	" XI.

TABLE VIII.

PROJECTIONS.

All to be of fireproof materials except the cornices and dressings to the window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant 15 feet from other building and from the ground of adjoining owner . . .	" XXVI. " 1.
Streets or alleys less width than 30 feet, any shop front may project beyond external wall not more than 5 inches, and any cornice 13 inches. If wider	

than 30 feet, shop front may project 10 inches and cornice 18 inches	Sec. XXVI. sub.-sec. 2.
No part of woodwork of any shop front shall be fixed nearer than $4\frac{1}{2}$ inches from line of junction of any adjoining premises unless a pier or corbel of fireproof materials, $4\frac{1}{2}$ inches, is built or fixed next to such adjoining premises as high as such woodwork, and projections in 1 inch front of face of same	" " " 3.
Water must not drip on pathway	" " " 4.
No projections except cornices, &c., and shop fronts, &c., without permission of Metropolitan Board of Works	" " " 5.

TABLE IX.

TIMBER.

Not to be nearer than 12 inches inside of flue or chimney opening	" XX. " 17.
Under chimney opening not within 18 inches from upper surface of the hearth. Within 2 inches from the face of brickwork or stonework about any chimney or flue where the work is less than $8\frac{1}{2}$ inches unless face rendered . .	" " " "
No wooden plugs nearer than 6 inches to the inside of any flue or chimney opening nor any holdfast nearer than 2 inches	" " " "

TABLE X.

HABITABLE ROOMS.

Every (except rooms in roof and cellars), in every part, 7 feet high from floor to ceiling	" XXIII. " 1.
In roofs at least 7 feet, not less than half the area of such room	" " " 2.
Cellars and underground, unless 7 feet high, 1 foot of its height above surface of footway	" " " 3.
Open area 3 feet wide, entire length drained, and use of closet and ashpit and fireplace	" CHII. L. M. Act.
Window 9 feet super, clear of frame, and opens	" " "

ABSTRACT OF THE

TABLE XI.

CLOSE FIRES AND PIPES.

Floor under oven or stove (used for trade) and around for 18 inches to be incombustible	Sec. XXI. sub-sec. 1.
No pipe to be fixed against any building on the face next street, &c. ..	" " " 2.
No pipe for heated air or steam nearer than 6 inches to combustible materials, for smoke nearer than 9 inches ..	" " " 5.
No hot water nearer than 3 inches ..	" " " 3.
This limitation does not apply where pipes convey hot water or steam at low pressure	" XVI. of the Amendment Act, 1882.

TABLE XII.

EXEMPTED BUILDINGS.

Not exceeding 30 feet high from footings of wall	Sec. VI.
127,000 feet cube	" "
8 feet from street	" "
30 feet from nearest building	" "
60 feet from nearest building	" "
30 feet from street	" "
Not exceeding 216,000 feet cube ..	" "
Party fence walls	" "
Woodwork of greenhouses	" "
Ventilating valves not exceeding 40 square inches, not nearer than 12 inches from any timber	" "
Certain public and other buildings ..	" "

TABLE XIII.

ACCESSES AND STAIRS.

Public buildings and those having more than 125,000 cubic feet, and used as dwellings for separate families, all must be fireproof, including landings, &c. ..	" XXII.
Separate sets of chambers or rooms tenanted by different persons, if contained in a building exceeding 36,000 square feet in area, be deemed a separate building, and divided vertically by brick walls, and horizontally by party arches, or fireproof floors	" XXVII. sub-sec. 2.
A building in one occupation, divided in	

two or more, each having separate entrance and staircase, or a separate entrance from without, shall be deemed each a separate building	Sec. XXVII. sub-sec. 3.
Every warehouse or other building used wholly or in part for trade, &c., containing more than 216,000 cubic feet, shall be divided by party walls, in such manner that the contents of each division shall not exceed the above quantity	" " " 4.

TABLE XIV.

UNITED BUILDINGS.

No building shall be united unless wholly in one occupation	" XXVIII. " 1.
Nor if, so done, it is contrary to Act ..	" " " 2.
No openings in party wall, which, if taken together, would contain more than 216,000 cubic feet, except such opening shall not exceed 7 feet wide, and have floor jambs and head formed of brick or fireproof, and be closed by two wrought-iron doors, each $\frac{1}{4}$ inch thick, in panel distant from each other the full thickness of wall, fitted to rebated frames without woodwork ..	" " " 3.
When ceased to be occupied by one tenant, must be again divided, and opening stopped up	" " " 4.

TABLE XV.

BACK YARDS.

Dwellings, unless all rooms can be lighted from the street and ventilated therefrom, shall have in rear or side thereof an open space (exclusive) at least 100 square feet	" XXIX.
Altered as follows:—	
If frontage does not exceed 15 feet, at least 150 square feet	" XIV. New Amendment Act, 1882.
If frontage does not exceed 20 feet, at least 200 square feet	" " "
If frontage does not exceed 30 feet, at least 300 square feet	" " "
If frontage exceeds 30 feet, 450 square feet	" " "

METROPOLITAN BUILDING ACT.

18 & 19 Vict. c. 122.

ARRANGEMENT OF CLAUSES.

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2.	Commencement of Act.	
3.	Interpretation of certain terms in this Act.	
<i>Limits of Act.</i>		
4.	Limits of Act.	8 Vict. c. 84, s. 3.
5.	Division of Act.	

PART I.

REGULATION AND SUPERVISION OF BUILDINGS.

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| 7. | Application of Act. | |
| 8. | Building, when deemed to be new. | |
| 9. | Alterations of and additions to old
buildings. | |
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20. Rules as to chimneys and flues ..	8 Vict. c. 84, Sch. F.
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29. Open spaces near dwelling houses ..	" " K.
30. Construction of public buildings.	

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31. Buildings to be supervised by District Surveyors	" c. 84, s. 68.
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THE METROPOLITAN BUILDING ACTS.

WHAT is a Building? One would probably expect that the easiest or at least the most certain way to find a definition would be by referring to the Metropolitan Building Act, 1855, but although nearly every other term and expression is explained in the preliminary part of that Act, neither there nor in any other part of the Act is there a definition of what is and what shall be considered to be a "building," and probably few matters have given more trouble to the magistrates.

Mr. Woolrych in his able work on the subject (I quote from the 2nd edition, revised by Noel H. Paterson, published in 1877) mentions this fact, and says: "It has, however, been decided that a wooden structure 16 feet by 13 feet, intended for permanent use, is a 'building,' although only laid on timber and not let into the ground, as it is clearly an erection in breach of what Byles, J., called the main intention of the Act, viz. to prevent the erection of combustible structures."

This is the decision embodied in the well-known case of *Stevens v. Gourley*, 7 C.B. (N.S.) 99, 27 L.J.C.P. 1, and is the leading case still.

Nov. 3, 1859.—Stevens v. Gourley.

Metropolitan Building Act (18 & 19 Vict. c. 122, ss. 8, 12).—Building, Meaning of—Illegal Contract.

The 12th section of the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), enacts that walls shall be constructed of such substances, of such thickness, and in such manner as are mentioned in the first schedule, which states, that "every

building shall be enclosed with walls constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground or upon concrete or upon other solid substructure." The Act does not define the meaning of the term "building," but states in the 8th section that "a building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the 1st of January, 1856." The plaintiff, after that date, erected a shop for the defendant, all of wood, without footings or any brickwork for a foundation. The structure was about 13 feet high, and as many wide; it was built on wooden joists laid on the ground, without being let into or fastened to the soil, and the whole was capable of being removed in its entirety. The parties originally intended to have had a brick foundation for the structure, and to have excavated the ground in the usual way to receive it; but this plan was abandoned, and at the plaintiff's suggestion the shop was made all in wood as above stated, without the use of any brickwork, in order to evade the said Building Act, but with the intention of answering all the purposes which the one originally contemplated was to have done:—*Held* (Williams, J., *dubitante*) that the shop was a building within the meaning of the Building Act.

Held also that the 12th section prohibits buildings with walls of wood or other combustible substance; and that the shop being therefore a building in violation of such prohibition, the plaintiff could not recover the price of erecting it.

Semle (per Crowder, J., and Byles, J.), that the 8th section applies only to buildings which commenced before the 1st of January, 1856.

The declaration contained the common money counts for work and labour, and on accounts stated.

Third plea.—That the said work was done, and the said materials were provided by the plaintiff, under an illegal contract between the plaintiff and the defendant, made after the Metropolitan Building Act, 1855, came into operation, (to wit) on the 5th of December, 1858, for the erection of a certain building within the limits of the metropolis, as

defined by the Act passed in the session of Parliament held in the eighteenth and nineteenth years of Her Majesty's reign, intituled "An Act for the better Local Management of the Metropolis," which building was a new building within the meaning of the said Building Act, and was not within any of the exemptions in the said Act mentioned; which building it was agreed, by and between the plaintiff and the defendant, should be enclosed with walls constructed of wood, and not of brick, stone, or any other hard or incombustible substance, contrary to the form of the statute in such case made. That the plaintiff before and at the time of making the said contract was a builder; and that the said contract was entered into by the defendant at the suggestion of the plaintiff; and that the plaintiff before and at the time of making the said contract represented to the defendant that the said building might be lawfully erected, and was not contrary to the law; and that the defendant, when he entered into the said contract, believed the said representation, and did not know to the contrary thereof, and entered into the said contract, and allowed the said work to be done, and the said materials to be provided, and stated the said accounts, believing the said representation to be true. That the said work was illegally done, and materials were illegally provided by the plaintiff in and about constructing the building within the limits of the metropolis as aforesaid, with such walls as aforesaid, contrary to the said statute; and the said accounts were stated concerning the money claimed by the plaintiff to be due to him from the defendant under the said illegal contract, and for the said work and materials so illegally done and provided; and the money which the plaintiff alleged was found to be due upon the said accounts was the money so claimed; and that after the said work had been so done and the said material had been so provided, and the said accounts had been so stated, the district surveyor gave the plaintiff's sub-contractor, then being the builder engaged in erecting the buildings, due notice to remove the said work within forty-eight hours, (that is to say) to pull down the said building. That the

plaintiff and his sub-contractor having failed to comply with the said notice, the said district surveyor caused complaint to be made before a magistrate of the police courts of the metropolis duly authorised in that behalf; and the said sub-contractor was thereupon duly summoned to appear before the said magistrate according to the said Act; and the said magistrate thereupon duly ordered and commanded the said sub-contractor to comply with the requisitions of the said notice; and the plaintiff or the said sub-contractor, or the said district surveyor, pulled down the said building, the same being necessary for enforcing the requisitions of the said notice, and for bringing the said building and work into conformity with the rules of the said Act. That all conditions precedent, necessary matters and things were done in that behalf to justify and render necessary the pulling down of the said building, and by reason of the promise and of the said work and materials being so done and provided by the plaintiff illegally, and contrary to the said statute, the defendant never derived any benefit or advantage whatever from the said work or materials, or any part thereof. Issue thereon.

The cause was tried before Martin, B., at the Lewes Spring Assizes for 1859, when it appeared that the defendant being defendant, in the latter part of 1858, of erecting a shop in the forecourt of his house in Bentinck Terrace, Regent's Park, applied to the plaintiff, a builder, on the subject. The plaintiff thereupon made out and sent to the defendant the following specification and contract:—

Specification of works required to be done at No. 1, Bentinck Terrace, Regent's Park, for D. D. Gourley, Esq., M.R.C.S.E.

Excavator.—To dig out and remove clay to level of pavement, 16 feet back and 14 feet wide to receive house. Bricklayer.—To build three courses of footings and sleeper-walls; bed all quartering in mortar. Carpenter. To erect in wood a house, the dimensions to be 16 feet from front to back, and 13 feet 8 inches frontage, the height to be 13 feet frontage, and 9 feet from floor to floor. To be built of quartering 8 inches by 2 inches, and weather-boarded on outside, also to be match-boarded all over the inside. Ground floor joists to be 4½ inches by 2 inches, on sleepers 2 inches by 3 inches, with ½-inch low deal flooring properly laid, also to put ceiling joists, 3 inches by

2 inches, rough-boarded on top and match-boarded under, with one skylight in roof, the whole of the roof to be covered with zinc, with proper fall for water, the front to be made with two sashes, with door in centre, with all pilasters, mouldings, &c., as shown on plan, with $\frac{1}{4}$ -inch bead and butt shutters, stall boards, &c., complete on cross partition, to be framed in $1\frac{1}{4}$ -inch yellow deal, with glass in upper part, with $1\frac{1}{4}$ -inch framed door in centre, and leave all perfect. Zinc work.—To cover the whole of the roof with No. 9 zinc, properly solder all joints, eaves, &c. Smith.—To provide all cocks, bars, nails, screws, &c., necessary for the completion of the aforesaid works. Painter.—To paint the whole of the works in three oils outside and inside, and leave all perfect.

I hereby undertake to complete the whole of the aforesaid works to the satisfaction of Mr. Gourley, or his surveyor, as per specification, for the sum of 58*l*. To be completed on the 18th of December, 1858.

(Signed) JOHN STEVENS.

Before anything had been done under this contract an alteration was made in it, by substituting a wooden for a brick foundation to the structure, for the purpose, as it was thought, of evading the provisions of the Metropolitan Building Act (18 & 19 Vict. c. 122). This alteration was according to a suggestion made by the plaintiff, in the following letters to the defendant, of the 6th and 10th of November, 1858:—

To Dr. GOURLEY.

DEAR SIR, 21, WESTERN TERRACE, WESTBOURNE GROVE, W.

I have just considered and found out a new plan for us to work on in reference to the shop, Bentinck Terrace, which is to build it all in wood; it will be less expense and answer your purpose just as well, and it will look as well; and then we shall evade the Metropolitan Board of Works, and the District Surveyor also. It will last quite long enough and answer all you require. If you consider it over and write me this evening, I will put it in hand at once.

Yours obediently,

(Signed) JOHN STEVENS.

November 6th, 1858.

P.S.—I think 50*l*. will pay that.—J. S.

To D. D. GOURLEY, Esq.

DEAR SIR,

"The plan of building the shop will be a facsimile of what you have: the elevation will be just as I show you on the plan, the only difference will be wood instead of brickwork. You would not know

the difference in any other way, and the cost of erection will be 55*l*. I have thoroughly gone into the matter, and therefore assure you it cannot be erected for less.

Yours obediently,

(Signed) JOHN STEVENS.

November 10th, 1858.

The shop was erected in wood according to this altered contract by a person of the name of Way, who did the work under a sub-contract with the plaintiff. It had no footings nor brick foundations, but rested only on wooden joists, which were simply placed on the ground without being fixed to the same. Way was summoned before a magistrate by the district surveyor for having erected this shop without previously giving the notice required by the Metropolitan Building Act, and also because the shop was, as such surveyor alleged, an irregular building, contrary to such Act. The plaintiff, though not himself summoned, attended at the hearing of the summons and objected to the proceedings; but Way consented to an order being made by the magistrate for the removal of the structure and for the payment of a mitigated penalty of 40*s*. Shortly afterwards, and in obedience to such order, Way caused the shop to be removed to his own premises. It appeared that the persons who so removed it did so by lifting it off the ground in its entirety, without drawing a nail. During the progress of erecting the shop, the defendant had paid 30*l*. on account; and there being evidence of his having accepted the building when finished, the jury found a verdict for the plaintiff for 25*l*., the balance due according to the altered contract, the learned Judge reserving leave to the defendant to move to enter a verdict for the defendant on the issue taken on the third plea. A rule *nisi* to that effect having been obtained,—

Barnard now showed cause.—The third plea was not proved. The shop was not a new building within the meaning of the Metropolitan Building Act (18 & 19 Vict. c. 122) as alleged in such plea, because it had no foundation of brickwork or masonry to which it was attached: indeed “had no footings at all, but rested with its own weight only

on the ground, and was movable and capable of being moved away in its entirety. Section 8 of the Act states that "a building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the 1st of January, 1856." It is obvious, therefore, that the structure must be one which has footings to be a building at all within the Act. What was erected by the plaintiff in this case was not let into and fastened to the ground, as the Act evidently contemplates a building to be, but was a mere chattel, and could not with any propriety of language be called a building any more than a box which is carried about in the hand could be said to come within such designation. With respect to that part of the plea which relates to the proceedings before the magistrate, the defendant ought to have shown that the order of the magistrate was binding on the plaintiff. The defendant failed to do so, for the order could not have such effect, since the plaintiff was never summoned; and therefore, although he attended, he was unable to interfere in the matter, and was deprived of the power of appeal which the 106th section of the Act gives to a party to the case before the magistrate.

Montague Chambers, and *Joyce*, in support of the rule.—The third plea was substantially proved. The structure, being made of wood, was composed of a combustible substance, dangerous to other buildings, and clearly within the meaning of the Act. The 12th section states that "walls shall be constructed of such substances and of such thickness, and in such manner as are mentioned in the first schedule"; and that schedule says, "every building shall be inclosed with walls constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground, or upon concrete, or upon other solid substructure."

[*Crowder, J.*—What do you say was the foundation of this shop?]

Its own bottom.

[*Crowder, J.*—Does not the Act mean only something of a permanent nature, or which is attached to the soil?]

It is submitted that it does not. A structure which rests only on the ground, without being let into it, may be a building within the meaning of the Act. There is, moreover, nothing in the contract to show that this shop was not intended to be permanent. Then this was an illegal contract, contrary to the Act; and the plaintiff therefore cannot recover anything in respect of what he did under such contract.

Bensley v. Bignold (1) and *The Gas Light and Coke Company v. Turner*.

[*Erle, C. J.*—How do you show that this wooden structure was prohibited by the Act?]

The Act, by saying that the walls shall be constructed of brick, stone, or other hard and incombustible substances, necessarily implies that they shall not be constructed of any other substance. Except, therefore, they be such as the Act expressly says they must be, they are not lawful. With respect to the proceedings before the magistrate, the order, unless appealed against, was, it is submitted, conclusive. The plaintiff might, had he pleased, have indemnified Way; and therefore he suffered no hardship, because he could not himself have appealed.

Erle, C. J.—I am of opinion that this rule should be made absolute. It appears to me that the ultimate contract which was come to between these parties was a contract for a building, known to the plaintiff to be, or which (whether known to him or not), at all events, was in violation of the Building Act. There is a difficulty in defining the word "building," and I do not intend to lay down generally what constitutes a "building"; but I simply say that the structure in question was a building within the Act. In the contract between the parties the structure is called indifferently "house" or "shop." It was in the original contract to have a brick and permanent foundation, and was to last probably for as long as the defendant's term under his lease; but ultimately, in lieu of such foundation with brick walls, the structure was to be all wood, with a timber foundation; that is to say, the entire structure was to be composed of wooden joists laid on the ground, with wood added until the

shop was made. It appears to me, from the letters which were written, that that structure was to answer all the purposes of the one which was originally contemplated. Now, the structure originally contemplated was clearly within the Metropolitan Building Act, and that which was ultimately erected was, as stated in the plaintiff's letter, for the purpose of evading that Act by substituting a wooden foundation for one of brickwork. I am of opinion that the plaintiff was wrong in his notion of so evading that Act. I am of opinion that a house constructed of wood, although it be not resting on masonry let into the ground by way of a foundation, is, when I consider the combustible material of which it is formed, within the mischief provided against by the Act. The 12th section commands that all walls shall be made of such substances and of such thickness and in such manner as mentioned in the first schedule of the Act; and that schedule says that every building shall be enclosed in walls constructed of brick, stone, or other hard and incombustible substances, and shall rest on a foundation of solid ground, concrete, or other substances. Now, it appears to me that that is a command to build with walls of an incombustible substance, and is consequently a prohibition against building with walls of wood or other combustible substance; and so the contract which was made between the parties to this action was made in violation of the prohibition. This is, I think, an answer to the argument which has been addressed to us on the subject of there having been no foundation dug into the ground, and composed of masonry. It has been also argued, on the part of the plaintiff, that because this structure was movable and capable of being removed in its entirety, it was in the nature of a box or small article, and could not with any propriety of language be considered a house. But the answer to that is, that the contract was for that which is in the contract itself called a house, and which was made big enough for the use and habitation of man; and though by the application of mechanical power a large structure may be removed in its entirety, that does not prevent it from being a building within the Act. On the

whole consideration of the matter, I think that this was a structure prohibited by the statute; and the parties being *in pari delicto*, the case of the defendant prevails. The grounds on which my opinion is given are irrespective of the proceedings before the magistrate.

Williams, J.—I am of the same opinion, though not without some doubt and hesitation. My doubt is this. I agree that a structure of this kind is within the mischief contemplated by the Act, and that, therefore, if the Act can be so construed as to include it, we ought to do so. On the other hand, we ought not to so construe the Act, however beneficial it may be to the public, if it is apparent from the statute itself that the Legislature did not intend to extend it to such an object as this. Now, by the 7th section, the Act is to apply to all new buildings; then the 8th section says what shall be deemed to be new buildings. It says that “a building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the 1st of January, 1856.” Suppose, then, a case in which, on the 1st of January, 1856, a building like the one in question had been only partially carried into effect. Would that be a new building within the meaning of the Act? That would have to be ascertained by applying the Parliamentary test, which is by seeing whether the walls had been carried higher than the footings. In such a case it would be impossible to apply the test, because there would be no footings. The argument to be founded on this is that the Legislature only intended that the Act should apply to such buildings as had footings; and that, therefore, such a structure as the one in question, which had no footings, was not intended to be within the Act. I had some doubt, and, indeed, I still entertain a doubt, whether the Act applies to a structure to which the test given by the Act for ascertaining whether it is a new or old building cannot be applied; but I do not think it sufficient to induce me to differ from the rest of the Court. Assuming this to be a building within the Act, the case is clear; for the contract is clearly in violation of the statute, and the plaintiff is not entitled to recover,

according to the principle laid down in the case of *Foster v. Taylor* (3), where it was held that the vendor of butter in firkins not marked as prescribed by the Act of the 36th Geo. III. c. 86 could not recover the price of it. The plaintiff cannot, therefore, avail himself of the contract which the defendant made with him. The latter part of the plea, which relates to the proceedings before the magistrate, is immaterial.

Crowder, J.—I am of opinion that this rule should be made absolute, upon the ground that the plea, as alleged and proved, establishes that the action is in respect of a contract for a building in violation of the Building Act. It would certainly have been more satisfactory if the Act, when giving an interpretation as to many of the terms used in it (such, for instance, as “public building”), had defined what was the meaning to be attached to the word “building” in the Act. That, however, has not been done, nor has any authority been cited in which the definition of “building” has been given, nor do I intend to define what is the meaning of the term “building” in this Act. The question is, whether the contract between the parties was for a building within the meaning of this Act. Looking at the facts of this case, it appears clearly that the original intention of the parties was to erect a structure, about which there could be no doubt that it would have been a building within the Act. This intention appears to have been altered, as shown by the two letters which were given in evidence, and from which it would seem that there was an endeavour to evade the Act; but still it appears to me, on looking at these letters and the rest of the evidence, that the intention of all parties continued to be that what was erected should be a permanent structure, and it is with reference to its permanency that I desire to consider it a building within the meaning of the Act. It appears from these letters that it is to be a shop, built all in wood; “and it will last,” says the plaintiff, “quite long enough for you, and answer all you require.” It was intended originally to last some considerable time, and the change which was made in it was not to alter its permanency. The difficulty which occurred to me during

the argument was this. The first schedule of the Act, which is referred to in section 12, and which states how the walls are to be constructed, says the foundations shall rest on the solid ground or upon concrete or upon other solid substructure. It seems, therefore, that whatever the structure should be in order to be a building, it must be one which has foundations which can rest either on the ground or on concrete or the like. Then, the doubt in my mind was whether the structure in question had any foundation at all; but I think my lord has sufficiently shown that there was a foundation formed of joists laid at the bottom, to which the erection was attached; so that it may be said, in answer to this objection, that there was, in fact, a foundation. Then, with respect to the 8th section, which has been referred to by my brother Williams, I own that I am inclined to think that the new building pointed out in that section as a building to which it was intended the Act should apply, was one species, namely that which was only of the height mentioned in such 8th section when the Act came into operation. On the whole, I am of opinion that as this is a structure of some considerable size, and set up for a permanent purpose, it falls within the meaning of the Act as a building. Certainly it is within the mischief contemplated by the Act, and I think it is also within its terms. The contract, therefore, was for a building contrary to and in violation of the Act of Parliament.

Byles, J.—I also am of opinion that this rule should be made absolute. The doubt which has been entertained by my brother Williams has created the only difficulty in my mind which I have felt. I agree with my brother Crowder that the 8th section applies only to buildings of a particular class, and is directed solely to the question of what buildings commenced before the Act shall be deemed new buildings, and is quite independent of the other sections of the Act, which refer to and embody the first schedule, enacting that every building shall be constructed of incombustible substances. That being so, the question is, whether this erection is an illegal building within the meaning of the Act, and

that brings us to this—What is the meaning of the word building? It often happens that the verb to build is used in a wider sense than the substantive building, as to build a carriage or to build a ship, and it is said birds build nests; but none of these things when built would be called a building. It is a well-established rule that words must be construed according to their ordinary meaning; and though it is difficult, I may say impossible, to define the word building, yet it is easy to say whether this or that thing is or is not a building. What, then, is the ordinary meaning of the word building? Without pretending to define it, I think it is usually understood to be some structure or erection of considerable size, intended to be permanent, or at least to last for some time, whether let into the ground or not. A church built of iron or of wood, a house, or a stable, or a coachhouse, is evidently a building; but, on the other hand, a bird-cage with a handle for lifting it off the ground, or a wig-box, is not a building. In the present case there is a shop many feet wide and many feet high, and intended for human occupation; and it is clearly, in my opinion, a building in the ordinary sense of the word. Then, what is the object of this Act of Parliament? One of the objects is to prevent the erection of combustible structures; and therefore, looking at the ordinary meaning of the word and the object of the Act, there cannot, I think, be a doubt but that this is a building within the meaning of the Act; and the contract being illegal, the defendant is entitled to have the verdict on the third plea.

Rule absolute.]

I next give the most recent decision as to building on wheels, which I extract from the newspaper report.

BUILDING ON WHEELS.

On 5th July, 1882, a case of some importance was heard before Mr. Ellison. The point at issue has before been raised, under the Metropolis Building Act, as to what constitutes a building; and in this case additional interest was manifested from the peculiar nature of the structure.

The summons was against Mr. Robert Clark, of 403, Kennington Road, taken out by Mr. Banister Fletcher, the surveyor under the Act for the district, for his having, on the 28th March, erected, or caused to be erected, in the fore-court of such house, a certain structure without giving two days' notice before such building or work was commenced. In that notice the defendant was bound, it was alleged, to give the situation, area, height, and intended use of such building, &c., according to the terms of the Building Act, 1855, and whereby he had rendered himself liable to a penalty not exceeding 20*l*.

Mr. Burton, from the office of the Metropolitan Board of Works, appeared to prosecute, and pointed out that in this case defendant had erected, or caused to be erected, a certain wooden structure upon the garden in front of his house, which, although on wheels, was contended to be a building within the meaning of the Act. He believed that the contention of the defendant, from what he had heard, would be that, as the structure was upon wheels, it would not come within the provisions of the Act. He (Mr. Burton) desired to refer his worship to the case of *Stevens v. Gourley*, in which Mr. Justice Byles gave a decision; but likewise more particularly to a decision given by Mr. Chance at this court, on all fours, as it were, with the present case.

Mr. Fletcher was called, who said he was surveyor of the district in which the property of the defendant was situated. He noticed the building in question going on some time back. He afterwards found a building measuring 15 feet long by 12 feet wide and 10 feet high, constructed of wood, in the front garden of defendant's house. No notice had been given by the defendant or any one else of the intention of erecting such a building. Since the present summons had been issued, the structure had been cut in half, as it were, or divided, and one half moved back. In the building in question he noticed a table, chair, and sofa.

By the defendant: Could see the structure from the roadway. Did show witness the building when he came, but did not say it was a very nice summer-house.

Defendant: Is it a building even now, Mr. Fletcher?

Witness: It was a building, in my opinion, on the day the summons was taken out; but I cannot say what it is now. I understand it is now partly demolished.

Mr. Ellison: Partly demolished, I suppose you mean by being cut in half.

Witness: Just so, your worship.

The defendant here asked if he now gave notice whether it would be sufficient, but Mr. Ellison said it would not.

Defendant said he had in June received a letter from Mr. Fletcher, in which he termed the structure an illegal wooden building, and that instructions had been given by the Board of Works to take proceedings. To that letter he had replied, denying that he had erected an "illegal" building, but only a swing for his children, and a wooden structure which would not be permanent, as he intended to dispose of it when he got a customer.

Mr. Ellison said the only question really before him was if a building on wheels, as this was described, was a building within the meaning of the Act. He had no doubt there was the same danger arising from such a structure as another differently built, and he had no hesitation whatever in saying this structure was a building within the meaning of the Act, and he should hold such to be the case until his opinion was upset by that of a superior court.

Mr. Ellison imposed a penalty of 20s. and costs.

The money was paid.

Going back to the year 1874, in the case of *Knighthley v. Van Lorden*, a wooden fowl-house was considered by the magistrate to be a building. Another decision I give which shows that an erection is considered to be a building, and subject to the rules of the Act, although it possesses no roof. I give the case as it was reported at the time.

Enclosures of Buildings.—On Tuesday, the 20th July, 1875, Mr. Sedgwick, of 211, Hackney Road, appeared before Mr. Bushby, at the Worship Street Police Court, on a

summons by the district surveyor of Shoreditch, for constructing an irregular building.

From the statement of the district surveyor, it appeared that defendant had constructed a wooden enclosure and roof to an external staircase leading from defendant's house to a detached building in the rear. The fact was admitted; but defendant stated that, after receiving a formal notice from the district surveyor, *he had removed the wooden roof*, and he considered that what remained of the structure could not be considered a building under the Act. The district surveyor pointed out that, although by the first schedule every building must be enclosed with *walls*, it was not provided that there must necessarily be a roof, though section 19 provided for the *external covering* of roofs; he, therefore, contended that it was not essential that there should be a roof in order to constitute the structure a building within the meaning of the Act; there was no definition of a building in the Act. The learned magistrate said it appeared to him that one of the principal objects of the Act in question was protection against fire. He thought the risk from fire to defendant's structure was almost equally great whether the structure was covered with a roof or not, and that the Act was intended to prevent the erection of such a structure. He would, however, adjourn the case for a month to enable defendant to make an application to the Metropolitan Board of Works, if he thought proper, to ask their sanction for some modification of the structure instead of the enclosing walls which the district surveyor had required to be built.

It has been contended that fireplaces are necessary to constitute a building; this is not so. It has also been contended that shed buildings are not buildings within the Act; I give one or two decisions.

First as to sheds *with open sides*.

A Wood and Iron Building.—On the 29th March, 1880, at the Lambeth Police Court, before Mr. Ellison, Mr. Henry Jarvis, district surveyor of Camberwell, summoned Mr. Woodhams, of Copeland-road, Peckham, builder, for neglecting

to give notice of the erection of a structure on his premises. It was described as being about 24 feet square, and 13 feet high, with open sides, with wood-framed braces and upright posts let into the ground, supporting a corrugated iron roof. The defence was that the structure was not a building within the meaning of the Act. After hearing the evidence on both sides, the magistrate took time to consider his decision, and, in giving judgment, he said he was of opinion that the said structure was a building under the Act, and, as it was not constructed in accordance with the Building Act, the building *must be pulled down*, and he made an order accordingly.

I next give a decision where the shed was open on one side only.

DISTRICT SURVEYOR OF PENGE AND NORWOOD *v.*
WINNIFRITH.

LAMBETH POLICE COURT. Mr. ELLISON, Magistrate.
February, 1873.

S. 3, 1st Schedule, Cause 1.—Open shed a building.

This was a summons for not giving notice under section 38, for the erection of a wood carriage shed.

The district surveyor described the structure as being 28 feet 6 inches long by 23 feet 6 inches wide, one story high, enclosed on three sides with wood, and open on the other side, and roofed with wood and felt.

Upon this the magistrate stated that being open on one side, he did not consider the structure to be a building within the meaning of the Act. Whereupon the district surveyor stated that many structures of a similar kind had been deemed to be buildings. The magistrate asked for cases and adjourned this one for a fortnight for the district surveyor to bring precedents.

On the 6th February, the district surveyor argued that this was a case of much importance, because it would affect the mode

of erecting buildings not only in his own district, but also in all the districts throughout the metropolis. He observed that the Building Act had unfortunately no preamble, but if it had one, it would unquestionably have contained the phrase, that it is expedient to check the spread of fire in the metropolis, inasmuch as all its provisions were framed most conspicuously with that object. Neither did the Act contain any definition of a building, and consequently the presumption seemed natural, that all structures which were not movable chattels were buildings, and must be erected in the manner prescribed by the Act; further that there was an indication of this meaning in sec. 3, which states that the term "external wall" shall apply to every vertical enclosure of *any* building." Again, the first clause of the first schedule states that *every* building shall be enclosed with walls constructed in a certain manner. He alluded to all this, because it was evidently intended that structures should be enclosed with walls and not with wood, and he felt sure that if the structure in question were to take fire, other wood structures near it would also be burnt. Moreover, the Metropolitan Board of Works being now the conductors of the Fire Brigade, the interests of that body would suffer.

But the main question had to be considered, namely, as to whether a structure open on one side was a building or not, within the meaning of the Act, and in doing so it was necessary to understand what was meant by a side, and what number of sides a structure might have without its rising to the dignity of a building. Many buildings were irregular in shape and had a great many sides, and a building might be a decagon or duodecagon, and then if one-tenth or one-twelfth of its outside were open, it would not be admitted into the category of buildings, if the being open on one side gave it exemption; or it might be circular, having only an inside and an outside, and then the question would arise how much of the periphery must remain unenclosed. The exemption derived from being open on one side would apply not only to the flimsy structure in question, but to others, however large or substantial, so that if as strong as a castle

or a warehouse, they would be exempted, which he thought could not have been intended.

The district surveyor produced five precedents of structures open on one side, which had been condemned by police magistrates, two of which were in this court, and he stated that he could produce numerous analogous cases, but he thought it best to confine himself exactly to structures open on one side.

Mr. Ellison gave judgment for the district surveyor, and ordered the payment of a fine of five shillings and costs.

The following is a case of a *wooden erection* in which the decision was given in the month of February of the present year (1882):—

QUILTER v. SMART.

An action brought by the district surveyor for East Streatham, against a builder for constructing a wooden shop in the Brixton Road, was heard before Mr. Chance, the magistrate at Lambeth Police Court, on Wednesday, February 15th, 1882. The building, which stands in a portion of Rush Common, had been constructed entirely in woodwork and on wheels, owing to one of the provisions of the Commons Act, which prohibits the erection of any "building" within 150 feet of the road, and a notice had been served by Mr. John S. Quilter, the district surveyor, that the building was contrary to the requirements of the Metropolitan Building Act, 1855, the walls not being constructed of brick, stone, or other incombustible materials. The shop had 15 feet frontage, 24 feet depth, and a height of 10 feet. The floor consisted of a wooden platform mounted on strong iron wheels about 2 feet diameter, which rested on a bed of concrete, the top of which was a few inches below the level of the ground.

Mr. Edwin Jones, counsel for the defendant, argued that it was not a building, but a portable caravan, which could be moved from place to place by the application of sufficient force; and although the plaintiff relied upon decision on appeal in Common Pleas in the case of *Stevens v. Gourley*, yet

the present case was distinguished from that, inasmuch, as in *Stevens v. Gourley*, the building rested upon wood joists laid on the ground, whereas in this case the structure was on wheels, which made it movable. After reading the judgment of the court in *Stevens v. Gourley*, the magistrate decided that the present case was covered by that judgment; and that the opinion expressed in particular, especially that of Mr. Justice Byles, as to what constituted a building must be held to apply here.

An order was therefore made to take down the building, but on the request of the defendant's counsel the magistrate consented to grant a case for the superior courts.

JOHN S. QUILTER,

District Surveyor for East Streatham.

18th Feb., 1882.

Mem. Notice has since been received that the work would be amended and made to conform with the Building Act.

J. S. Q.

The building was afterwards amended, 14th April, 1882.

The next case is that of advertisement hoarding; being considered a building; the case is recent, being July 13, 1881, as follows:—

NO. 28, LITTLE ST. ANDREW STREET.

THE DISTRICT SURVEYOR OF ST. GILES v. WILLING.

Advertisement Hoarding and Battening over Face of Building.

At Bow Street Police Court, before Mr. VAUGHAN, on 13th July, 1882. Counsel for Mr. WILLING, Mr. GRAIN.

The district surveyor stated that the matter, though a small one as regards himself, was an important one as regards the public and the working of the Building Act.

On or about the 23rd June, Mr. Hayward noticed that some battening carrying boarding and canvas for advertisements had been fixed in the Little White Lion Street, side of the building No. 28, Little St. Andrew Street (where it had the

largest frontage), also on the face of the entrance frontage in Seven Dials.

This building had recently been erected, and when completed had been left in accordance with the requirements of the Building Act.

Now, however, it was, as regards the two sides, covered with this battening, &c., which it appears had been fixed by Messrs. Willing, so putting the building into a state contrary to the provisions of the Act. It had in fact been brought into such a condition by this battening and boarding.

Having communicated with Messrs. Willing, and they having declined to give any notice or otherwise recognize the district surveyor's right to interfere, the summons was taken out on the 13th July. At the same time an intimation was given to Messrs. Willing, in the usual form, of the irregularity of their work, which since then had been amended by the taking down of the battening (or some of it, &c.) complained of.

The summons, however, remained, notwithstanding, for doing the work without notice. The district surveyor contended that he was entitled to notice under clause 38 for work done in, to, and upon a building, and the following clause, No. 41, apportioning a penalty for neglect to give notice, should be applied in this case; that it was an important matter as regards the liability to the spread of fire, one of the chief matters referred to in the Act (see clause 26 and 14).

Mr. Grain, on behalf of the defendant, contended that the words in, to, or upon a building did not apply to such trivial work as to this battening and boarding not set in any part of the wall; and that if it did it might apply to Brewer's sign, &c., and referred to the other Acts (Metropolitan Management Act, &c.), as regulating these matters.

But Mr. Hayward contended that the work was building, and such as was specially subject to the Act as shown in clause 26, where every cornice, &c., was to be of fireproof material; and in clause 14, where loophole frames alone, except

of corner shop fronts, &c., were exempt from being set back 4½ inches from the face of the wall ; and that Messrs. Willing could not be permitted to do so with impunity what no one else in the usual carrying out of the building works would be allowed to do.

Mr. Grain then contended that Mr. Willing was not the builder in the sense of the Act, but Mr. Hayward pointed out that, if so, any one could avoid the penalties of the Act, and while employing men to do the work, neither render themselves nor any one else liable, and so bring the Act to naught.

Mr. Vaughan having expressed his opinion in Mr. Hayward's favour during the case, retired to consider further, and returned to express himself quite in favour of the district surveyor's contention, only allowing the summons to be adjourned till the 7th September (as he would be away and not back till then) as Mr. Grain desired a case for the superior court.

The district surveyor asked in the meanwhile how he should stand, when Mr. Vaughan again expressed his distinct ruling in Mr. Hayward's favour, and Mr. Grain undertook that no other matter should be prejudiced by this delay. Having now given what is and what is not considered a building, we proceed with the Act ; and I may mention that against each section and sub-section in the Act will be given all the decisions that I think are relevant, so that there will be no necessity to refer backwards and forwards to find cases bearing on the point.



ANNO DECIMO OCTAVO & DECIMO NONO
VICTORIÆ REGINÆ.

CAP. CXXII.

*An Act to amend the Laws relating to the Construction of Buildings
in the Metropolis and its Neighbourhood.*

[14th August, 1855.]

WHEREAS it is expedient that the laws relating to buildings in the metropolis and its neighbourhood should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

PRELIMINARY.

I. This Act may be cited for all purposes as "The Short title. Metropolitan Building Act, 1855."

II. This Act shall, except in cases where it is otherwise expressly provided, come into operation on the first day of January one thousand eight hundred and fifty-six. Commence-
ment of Act.

III. In the construction of this Act (if not inconsistent with the context) the following terms shall have the respective meanings hereinafter assigned to them; (that is to say, Interpreta-
tion of cer-
tain terms
in this Act.)

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury:

"Public building" shall mean every building used as a church, chapel, or other place of public worship; also every building used for purposes of public instruction; also every building used as a college, public hall, hospital, theatre, public concert room,

public ball room, public lecture room, public exhibition room, or for any other public purposes :
 "External wall" shall apply to every outer wall or vertical enclosure of any building not being a party wall :

Mr. Woolrych in his work quotes the following case :

A party fence wall (see 8 Vict. c. 84, s. 32) might possibly have come within this definition, but this kind of structure is expressly exempted by the 6th section. A wall is not the less an external wall because another house adjoins to it. There was a dispute between a lessor and a lessee as to the repair of a house which had been damaged by the act of a corporation. The lessor had covenanted with his tenant to keep in repair all the external parts of the demised premises except the glass and lead of the windows. The premises were in the High Street, Exeter, and they adjoined the *Swan Inn* there. The corporation of Exeter pulled down the *Swan Inn*, and in so doing exposed the wall which had divided the *Swan Inn* from the house in question. It was contended amongst other points that the wall pulled down was not an external wall within the meaning of the covenant, for that the external parts were those which were exposed to the air and to the view of the landlord. But the court gave judgment against the objection. "We think," said Lord Denman, that it (the wall) was an external part of the premises before the *Swan* was pulled down, but certainly afterwards. The external parts of premises are those which form the inclosure of them and beyond which no part of them extends, and it is immaterial whether those parts are exposed to the atmosphere or rest upon and adjoin some other building which forms no part of the premises let (*Green v. Eales*, 2 Q.B. 225).

The decision would seem to create confusion, as the judges appeared to incline to the conclusion that a party wall was an external wall even when according to this Act it evidently came under the description of party wall.

"Party wall" shall apply to every wall used or built in order to be used as a separation of any building from any other building, with a view to the same being occupied by different persons :

"Cross wall" shall apply to every wall used or built in order to be used as a separation of one part of any building from another part of the same building, such building being wholly in one occupation :

See plate 15. for illustration of "cross wall."

"Party structure" shall include party walls, and also partitions, arches, floors, and other structures separating buildings, stories, or rooms which belong

to different owners, or which are approached by distinct staircases or separate entrances from without :

For the most recent decisions and exhaustive summing up as to party wall, see the case with which Part 3 opens.

The "area" of every building shall be deemed to be the superficies of a horizontal section of such building made at the point of its greatest surface, including the external walls and such portion of the party walls as belong to the building, but excluding any attached building the height of which does not exceed the height of the ground story :

For decision as to area see page 77, *Knightley v. Stanway*.

"The base of the wall" shall mean the course immediately above the footings :

"Owner" shall apply to every person in possession or receipt either of the whole or of any part of the rents or profits of any land or tenement, or in the occupation of such land or tenement other than as a tenant from year to year or for any less term, or as a tenant at will :

Mr. Woolrych in his book gives a footnote, as follows:—"This expression, in addition to the definition of it here given by the statute, has also received judicial interpretation. The following persons have been held to be owners within the meaning of the present Act:—

"(1) The lessee of a chapel for a term of twenty-one years (*Monrilyan v. Labalmondère*), 1 E. and E. 533, S.C. *Reg. v. Monrilyan*, 3 L.T.N.S. 668.

"(2) The lessee of a house for ninety-nine years who has sub-demised parts of it for various smaller terms, although the sub-tenants hold for a longer term than from year to year (*Hunt v. Harris*, 19 C.B.N.S. 13, 34 L.J.C.P. 249).

"(3) A tenant under a building lease at a peppercorn rent and not the owner in fee as he is not really in receipt of any profits (*Evelyn v. Whichcord*, E.B. and E. 126, 27 L.J.M.C. 211; see, too, *Candwell v. Hansom*, L.K. 7 Q.B. 55, 41 L.J.M.C. 8). Nor does it make any difference that the tenancy is strictly only equitable as under an agreement for a lease (*Cowen v. Phillips*, 33 Beav. 18), a decision which will now apply in all courts, Jud. Act 1873, s. 24.

"(4) The tenant of a house which has been burnt down when he by the terms of his lease pays no rent till the house is rebuilt has been held liable under s. 42 of 7 & 8 Vict. c. 84; but as that section contains the words 'entitled to the immediate possession,' it is a doubtful authority upon the present Act (*ex parte* the Overseers of Saffron Hill, 24 L.J.M.C. 56)."

Mr. Woolrych omits the case of *Tubb v. Good*, which is also important, and I therefore give it. This is a ruling case, namely, the owner is owner at the time the fee is due.

IN THE COURT OF QUEEN'S BENCH.

Tubb (Appellant) v. *Good* (Respondent).

Definition of Owner.

June 1870.

In May 1866 notice was given by Savage, builder, to Good, district surveyor, to erect three houses in Lefevre Row, North Bow. The houses were covered in on 9th July, 1866. The district surveyor endeavoured to obtain payment of the fees from Savage, but did not succeed.

Tubb became owner of the houses some time prior to October 1869, and on 1st October, 1869, a proper bill was delivered to Tubb, which he refused to pay. The magistrate made an order for the payment of the fees by Tubb, subject to the opinion of this Court as to whether, on the facts, such decision was right in point of law.

For the appellant: Tubb was not liable for the payment of these fees, having succeeded to the ownership after the same became due; and the liability created by the statute is not one which runs with the land, but attaches to the person to whom the service was rendered.

For the respondent: Tubb was chargeable with the fees as "owner," which term applies to the person entitled to the rents and profits. It did not appear that any one was in receipt of the rents or profits arising from the premises in question previous to Tubb becoming the owner; the decision of the magistrate was therefore right.

Mr. Justice Blackburn: I think it clear that the Act means that these fees are payable, when they become due, by the person who at that time answers the description of "builder, owner, or occupier." In this case the appellant's interest in the premises did not commence until long after the performance of the services in respect of which the fee is claimed, and I think, therefore, he is entitled to our judgment. The others concurred.

Judgment for the appellant.

I next give a decision showing difficulty of finding the owner of a churchyard.

The Rev. J. F. Lingham, rector of the parish of St. Mary, Lambeth, appeared to an adjourned summons that he, as owner of the structure known as the wall of St. Luke's Churchyard, High Street, Norwood, had, after a survey had been made by the district surveyor, who pronounced the wall to be in a dangerous state, incurred for the said survey fees amounting to 1*l.* 15*s.*, and 38*l.* 8*s.* 2*d.* for erection of hoarding and shoring, which he had neglected to pay.

Mr. Biron, instructed by the Metropolitan Board of Works, appeared to support the summons; and Mr. Meadows White, instructed by

Messrs. Rogers and Son, solicitors, attended on behalf of the Rev. Mr. Lingham.

The case had been before the Court on a former occasion.

Mr. Ellison now said he was of opinion the rev. defendant was not responsible, and dismissed the summons. If it was desired, however, that he should go through the various Acts upon the question he would do so, and adjourn the case.

Mr. Biron said he did not desire that, and would accept his worship's decision.

An application was made on the part of the rev. defendant for costs; and Mr. Ellison, in dismissing the summons, directed an order for 5*l.* 5*s.* costs against the complainants.

“Builder” shall apply to and include the master builder or other person employed to execute or who actually executes any work upon any building:

The wording of this definition is most comprehensive; it includes not merely master builder, but every journeyman of every trade who shall do any work where there is no master builder; and the penalty for not giving notice is equally enforceable.

“District surveyor” shall mean every such surveyor who is appointed in pursuance of this Act, or whose appointment is hereby confirmed, and shall include any deputy or assistant surveyor appointed under this Act.

In all cases in which the name of an officer having local jurisdiction in respect of his office is referred to without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the officer having jurisdiction in that place within which is situate the building or other subject matter or any part thereof to which such reference applies:

“Person” shall include “a body corporate.”

LIMITS OF ACT.

IV. This Act shall extend to all places within the limits of the metropolis as defined by an Act passed in the present session of parliament, intituled *An Act for the better local Management of the Metropolis*, and to all other places to which such last-mentioned Act may be extended, unless such places are in making such exten-

Act to extend to all places within limits defined by 18 & 19 Vict. c. 120.

sion expressly excepted from the operation of this Act ; but nothing herein contained shall affect the exercise of any powers vested by any Act of Parliament in the Commissioners of Sewers of the city of London for the time being.

Division of
Act.

V. This Act shall be divided into five parts :

- (1.) The first part relating to the regulation and supervision of buildings :
- (2.) The second part relating to dangerous structures :
- (3.) The third part relating to party structures :
- (4.) The fourth part relating to miscellaneous provisions :
- (5.) The fifth part relating to the repeal of former Acts, and to temporary provisions.

PART I.

REGULATION AND SUPERVISION OF BUILDINGS.

Buildings,
&c., herein
named ex-
empt from
operation of
Part I. of
this Act.

VI. The following buildings and works shall be exempt from the operation of the first part of this Act :

Bridges, piers, jetties, embankment walls, retaining walls, and wharf or quay walls :

Her Majesty's royal palaces, and any building in the possession of her Majesty, her heirs and successors, or employed for her Majesty's use or service :

Buildings erected by the commissions of lieutenancy of London for the arms and stores of the militia are within this exemption, *Reg. v. Jay*, 8c and B 469, 27 L.J.M.C. 25.

Common gaols, prisons, houses of correction, and places of confinement under the inspection of the inspector of prisons, and Bethlehem hospital and the house of occupations adjoining :

The Mansion House, Guildhall, and Royal Exchange of the city of London :

The offices and buildings of the Governor and Company of the Bank of England already erected, and which now form the edifice called "The Bank of England," and any offices and buildings hereafter to be erected for the use of the said governor

and company, either on the site of or in addition to and in connection with the said edifice:

The buildings of the British Museum :

The offices and buildings of the Honourable East India Company already erected, and any offices or buildings hereafter to be erected, for the use of the said company, on the site of or in addition to such existing offices and buildings :

Greenwich Hospital and the buildings in the parish of Greenwich vested in the commissioners of Greenwich Hospital for the purposes of the said hospital :

All county lunatic asylums, sessions houses, and other public buildings belonging to or occupied by the justices of the peace of the county or city in which the same are situated :

The erections and buildings authorized by an Act passed in the ninth year of the reign of his late Majesty King George the Fourth, for the purposes of a market in Covent Garden :

The cattle market, with its appurtenances, erected in pursuance of the Metropolitan Cattle Market Act, 1851 :

The buildings belonging to any canal, dock, or railway ; and used for the purposes of such canal, dock, or railway, under the provisions of any Act of Parliament :

The most recent decision affecting railways is probably that of the 1st March, 1881, and it is so important, that I give it *in extenso*.

Building on Land of Great Northern Railway Company Exempt.

Deputy District Surveyor of East Islington v. Page Brothers.

CLERKENWELL POLICE COURT ; MR. HOSACK, Magistrate.

1st March, 1881.

The deputy district surveyor stated that on the 8th of December last he discovered a building, 9 feet 6 inches by 12 feet by 8 feet 6 inches high, being erected on the west side of Stroud Green Road, immediately infringing on the public footway, but on Great Northern Railway land. The building was enclosed with timber framing, and it had since been boarded, and the roof had been covered with tiles. Messrs. Page Brothers, of 21, Coal Department, Great Northern Railway, King's Cross, informed the deputy district surveyor that they were building it themselves for a coal order office, and denied the

deputy district surveyor's jurisdiction. He, the deputy district surveyor, told them he considered they were erecting an office in which to carry on their trade of coal merchants, and therefore the building would not be exempt by reason of its being for the purpose of a railway company as alleged by them. They declined to submit to his reasoning, and accordingly on a subsequent day he served them with statutory notice to amend the irregularity of construction, and in due course took out against them (1) a summons for penalty for their neglect of having given him notice, and (2) a summons in the case of the irregularity. These summonses were returnable on Tuesday, the 22nd of February, at Clerkenwell Police Court. Mr. Ricketts, solicitor, defended Messrs. Page; Mr. Low (Turner and Low, 30, King Street, Cheapside) conducted the deputy district surveyor's case. Mr. Hosack, magistrate, decided on that day that it was such a structure as ought to be built in conformity with the rules of the Act, provided it was not exempt under sec. 6, and adjourned the case for defendants to bring evidence that the building was used for the purposes of a railway company. The adjourned hearing took place on the 1st of March, when Mr. Ricketts called a clerk from the solicitor's office, Great Northern Railway, and the coal depôt inspector, both of whom proved that Messrs. Page Brothers were the builders of the structure, and that they were tenants of the company, whose servants had the right of entry to the building at all times. Mr. Hosack decided the building was used for the purposes of a railway and was exempt, but said he would grant the deputy district surveyor a case if he wished.

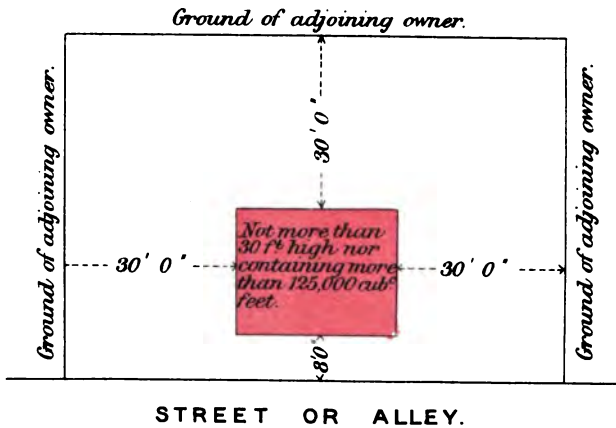
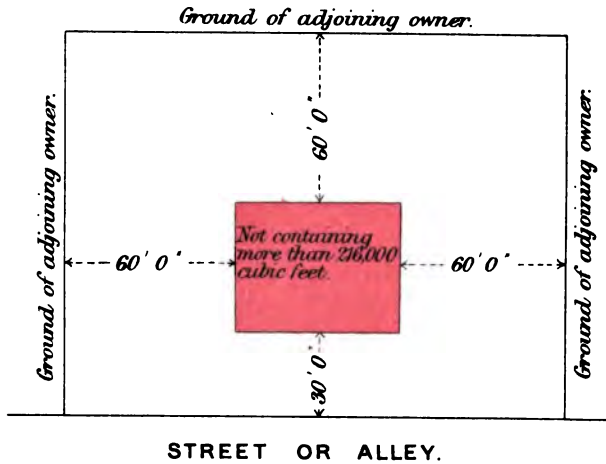
This decision does not relate to or include the clauses in the portion of the Act relating to dangerous structures, nor when the buildings are let by the Railway.

All buildings, not exceeding in height thirty feet, as measured from the footings of the walls, and not exceeding in extent one hundred and twenty-five thousand cubic feet, and not being public buildings, wholly in one occupation, and distant at least eight feet from the nearest street or alley, whether public or private, and at least thirty feet from the nearest buildings and from the ground of any adjoining owner:

All buildings not exceeding in extent two hundred and sixteen thousand cubic feet, and not being public buildings, and distant at least thirty feet from the nearest street or alley, whether public or private, and at the least sixty feet from the nearest buildings and from the ground of an adjoining owner:

On plate 12 I give an illustration of these exempted private dwellings,

EXEMPTED PRIVATE BUILDINGS.



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to fully illustrate the exemption. I do so, because in my practice I have so often the claim of exemption incorrectly raised, the usual mistake being a claim for exemption if the proposed building is situated 60 or 30 feet distant from adjoining houses and not adjoining land. I give a few cases illustrating this point.

District Surveyor of Stratford-le-Bow, &c. v. Wood.

THAMES POLICE COURT; MR. YARDLEY, Magistrate.

November 20, 1856.

Sec. 12, and 1st sch., prelim. rule 1. Sec. 6, 13th exemption.

Defendant erected a building, 73 feet by 24 feet, and two stories in height. The upper story was enclosed on the south side with weather boarding, contrary to sec. 12 and 1st schedule of preliminary rule 1. It was 12 feet from premises in another occupation.

Defendant contended that though in another occupation, the last-mentioned premises belonged to the same owner as those on which the building was erected, and that the building was exempt, as being thirty feet from the ground of an adjoining owner.

The magistrate overruled the objection, and ordered amendment within a month.

To these exempted buildings, Mr. Woolrych mentions, in a note, have now been added. (1) Buildings erected by and with the sanction of the Commissioners for the Exhibition of 1851, except as such are erected for private dwelling houses, "Metropolitan Building Amendment Act, 1861" (24 & 25 Vict. c. 87). (2) The new buildings of the Foreign Cattle Market, erected on the site of Deptford Dockyard, "Metropolitan Building Act, 1871" (34 & 35 Vict. c. 39).

All party fence walls and greenhouses so far as regards the necessary woodwork of the sashes, doors, and frames:

Probably there has not been so much contention as to any section or sections in the Act as to this, people contending that greenhouses are exempt, although the wording expressly limits their exemption to the necessary woodwork of the sashes, doors, and frames.

I give the decision of Mr. Ingham, magistrate, and also Mr. Balguy, and mention the correspondence in *Gardening Illustrated*.

District Surveyor of Hammersmith v. Hawkins.

HAMMERSMITH POLICE COURT; MR. INGHAM, Magistrate.

1872.

Sec. 6 and 7. Greenhouse is a Building.

Defendant was a nurseryman, carrying on business at Shepherd's Bush, the ground he occupied being nearly covered by glass houses of various heights, all standing upon brick walls, and each heated by hot

water. Two chimneys had been built recently and attached to some of the houses in question, but no notice had been given, and the district surveyor summoned the defendant for not giving notice for one of these. His answer was that the chimney was not a building, and that if it was, it was exempt on the ground of distance from any other building, as *glass houses were not buildings*, and if they were, the Act exempted them. The district surveyor quoted sec. 6, rule 15, sec. 21, sec. 20 rules 4, 6, 9, and 10, and secs. 31 and 56. The magistrate took time to consider, and eventually gave a decision in favour of the district surveyor, observing that the intention of the Act was clear that all such constructions were to be considered as buildings; if not so, they would be entirely exempted, instead of which the Act exempted only a portion of such buildings.

NEGLECT OF NOTICE, 1875.

Greenhouses.

On the 17th July, at the Greenwich Police Court, before Mr. Balguy, Mr. J. Tolley, district surveyor of Sydenham, summoned Mr. A. Deards, builder, of Webber Row, Blackfriars Road, for having built two greenhouses at the Hall, Sydenham, without giving him the notice required by the Act of Parliament. The defendant stated that he was employed to do the brickwork only, and produced a perspective drawing of the walls of one of the houses, minus the sashes and woodwork, and urged that what he had done did not form a building, and therefore the notice was unnecessary.

Mr. Tolley drew the attention of the magistrate to the clauses in the Building Act, which set forth that the necessary woodwork of the sashes, doors, and frames only are exempt, and that, therefore, the brickwork is specially the work for which notice is required; and that the term "builder" applies to, and includes the master builder, or other person employed to execute, or who actually executes *any* work upon a building; also that the buildings were covered in, and that he had used every means from the 25th June to the taking out of the summons, to get defendant to give the notice, but without effect. The magistrate ruled that the defendant was the builder, and that the work he had done was a work subject to the rules and regulations of the Act, and, therefore, it was his duty to have given the district surveyor notice two days before he commenced the work, and that by the neglect he had incurred a penalty of 20*l.*; but that as he appeared to have misunderstood the Act, and not intentionally evaded giving the notice, the penalty would be reduced to 40*s.* and costs.

I next give Mr. Chance's decision on the same matter, quoting the case from the report in the *Builder* of February 7th, 1874:—

On the 3rd February, at the Lambeth Police Court, before Mr. George Chance, Mr. H. Jarvis, district surveyor of Camberwell, summoned Mr. Jacob, of East Dulwich, nurseryman, for having built a greenhouse,

100 feet by 20 feet, without giving him a notice as required by the Act. The defendant urged that the greenhouse was exempt, as it was more than 100 feet from road and over 30 feet from gardens of adjoining owners.

Mr. Jarvis drew the attention of the magistrate to the clause in the Building Act which sets forth that any building in order to be exempt must be 30 feet from any other building, as well as 30 feet from the gardens of adjoining owners.

In the *present case* it was clearly proved that there were large greenhouses within 7 feet of the building in question, and the magistrate ruled that it was not exempt, as it was clear to him that the "nearest buildings" meant any buildings whatsoever, and not those only in the gardens of adjoining owners.

Those who care to obtain the view of one of the public as to greenhouses may read *Gardening Illustrated*, 20th December, 1879, 12th February, 1881, 19th March, 1881, and 9th July, 1881; but the decision of 1879 would appear to be based on some misapprehension or some mistake in the letters; and I have had several decisions, and those recent, in which the magistrate has held that greenhouses are not exempt. In fact it may be now considered settled.

Opening made into walls or flues for the purpose of inserting therein ventilating valves of a superficial extent not greater than forty square inches, if such valves are not nearer than twelve inches to any timber or other combustible material.

VII. With the exemptions hereinbefore mentioned, this Act shall apply to all new buildings; and whenever mention is herein made of any building, it shall, unless the contrary appears from the context, be deemed to imply a new building.

Application of Act, except exemptions before mentioned.

VIII. A building shall be deemed to be new whenever the enclosing walls thereof have not been carried higher than the footings previously to the said first day of *January* one thousand eight hundred and fifty-six: any other building shall be deemed to be an old building.

Building, when deemed to be new.

IX. Any alteration, addition, or other work made or done for any purpose except that of necessary repair, not affecting the construction of any external or party wall, in, to, or upon any old building, or in, to, or upon any new building after the roof has been covered in, shall, to the extent of such alteration, addition, or work, be subject to the regulations of this Act; and whenever mention is hereinafter made of any alteration, addition, or work in, to, or upon any building, it shall, unless

Alterations of and additions to old buildings.

the contrary appears from the context, be deemed to imply an alteration, addition, or work to which this Act applies.

Re-building
old build-
ings.

X. Whenever any old building has been taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, the rebuilding thereof shall be deemed to be the erection of a new building; and every portion of such old building that is not in conformity with the regulations of this Act shall be forthwith taken down.

It has been held that, although the building might be gutted, as in the event of a fire, yet if the enclosing walls are left standing, still the building is not destroyed to the extent of one-half. There is no decision in the superior courts, but the following case and opinion may be studied with advantage:—

CASE.

A building, situate at the corner of Long Acre and Endell Street, which was a large coach manufactory, was burnt some months since. The roof was destroyed and the whole of the interior was burnt out, but the party wall on one side, separating it from the Music Hall in Long Acre remained standing, and also the three walls enclosing it on the other sides. These walls are lofty, and by direction of the Police some portions of the tops were taken down on account of danger to the public.

This building was erected whilst the late Building Act, 8 & 9 Vict. c. 84, was in force; and the owner got permission from the Official Referees to construct the building as to the interior part in some degree in variation to the strict rules of the Act, but the Referees had the power of modifying the rules.

The owner of the building is about to reconstruct it, and his builder has given to Mr. Kendall, the district surveyor, a notice, which accompanies the case. It will be seen that it is for "Reinstatement of building damaged by fire."

As before stated none of the building remains but the external walls and the party wall. By the 10th section of the present Building Act, 18 & 19 Vict. c. 122, it is enacted, "Whenever an old building has been taken down to an extent exceeding one-half of such building, such half to be measured in cubic feet, the rebuilding shall be deemed to be the erection of a new building, and every portion of such old building that is not in conformity with the regulations of this Act shall be forthwith taken down."

If it can be shown that the building has in consequence of the fire been "taken down to an extent exceeding one-half," measured as above, the reconstruction of it must be according to the regulations of the present Act, and if so the remaining walls could not be allowed to

remain, because they are contrary to the 13th section of the Act, No. 2; for the area of the recesses and openings in each wall taken together (as regards each wall) exceeds one-half of the whole area of the wall in which they are made.

The case is one of difficulty to the district surveyor, and is also one involving great responsibility; for the building, if reconstructed in the same way as before, without proper division walls in the interior and with the large openings, would be liable in case of fire to the spreading, as it before did, damage to surrounding property. The large openings in the external walls, which have been made to afford great light for the purpose of the coach-building business, afford large vents for the flames in case of fire. There is no doubt the taking down these walls and reconstructing them according to the rules of the Act would cause great expense to the owner, but there does not appear any other course for the district surveyor to pursue according to the rules of the present Building Act, and that to prevent the mischief that might arise, as already has arisen, he should give notice under the 45th section to "take down" the remaining external walls as not being "in conformity with the regulations of the Act in respect above mentioned.

To this course it has been objected. "How are 'the cubic feet' to be measured?" It has been urged to him that, the roof being off, how can any measurement at all be made?

Another objection stated to him is that the building has not been *taken down*, it has been burnt down.

It is besides stated that the walls are so exceedingly well constructed that notwithstanding the great fire which occurred they are perfectly sound, or can be made so with trifling work to them. And that this can be proved by the evidence of civil engineers and surveyors. On the part of Mr. Kendall it is considered that there can be no question as to the mode of ascertaining cubical contents. It is the cubical contents as the building stood, and then the measurement is easily enough taken; the height and the dimensions of the area of the building is shown by the enclosing walls, the number of cubic feet is easily ascertainable. The cubic feet was the space enclosed (*the capacity to contain*, and not solid contents as urged), and that as one-half of the space enclosed (including the various floors, rooms, roofs, &c.) has been destroyed there can be no doubt. See section 27, where the term cubic feet is also used, and if any other construction were attempted the Act would be useless as to both those sections.

If this construction be right, the portion of the building which remains, namely, the exterior walls, is not in conformity with the regulations of the Act, and therefore should be forthwith taken down.

An objection is raised also on the word "taken down." It is contended that the building has not been "taken down," but has been "burnt down." There is no doubt that the intention of the Act is to meet all cases of the removal of one-half of the building, measured in the way stated, so that the reconstruction of such building should be brought under the rules of the present Act. Besides this the words

"taken down" only means "to crush," "to reduce," "to suppress," according to Johnson's dictionary, quarto edition, and its present state answers each one of these words.

The real question between the district surveyor and the builder is this, the district surveyor contends that the reconstruction must be in every respect according to the present Building Act. The builder contends as by his notice, that it is merely a "reinstatement of building damaged by fire." If the latter be right, the building will be reconstructed in almost every respect contrary to the present Building Act; and for the safety of the public it is desirable that the district surveyor should ascertain what is the proper course for him to pursue.

Although the works of restoration are commenced, there does not appear to be any course by which Mr. Kendall can bring the question before a magistrate except under the 10th section, and that is what should be done.

If the magistrate decide that the building is to be reconstructed exactly as it was before, it does not appear that the district surveyor will have any right whatever to interfere, and that the 9th section will not give him this power; for it has been held by the magistrate, in the decided case, *Queen v. Badger*, D.S., that old works can be reinstated in the same form they were before, although contrary to the regulations of the present Building Act.

Besides, it would be better for the district surveyor to have a magistrate's decision before such reconstruction is made; because it will be then objected he allowed the owner to go to great expense, and that he ought to have interfered sooner.

Mr. Russell will therefore advise Mr. Kendall,

1st. Whether according to the Act the way he suggests of ascertaining the cubic contents be correct, and that one-half of the building has been taken down?

2ndly. If so, whether the proper course for him to pursue is to give the notice to take down the remaining portions which are not in conformity with the Act.

3rdly. If not, what other course will be better for him as the district surveyor to pursue.

Mr. Russell's immediate attention is particularly requested, as the works are proceeding.

(COPY) OPINION.

The facts of the case seem to show that the roof and whole interior of the building have been destroyed by fire, but that almost the whole of the exterior walls remain still standing. On this statement I am inclined to think that the building has not been "taken down" to an extent exceeding one-half of such building within the meaning of section 10 of the statute 18 & 19 Vict. c. 122.

The mode of measuring a building to ascertain the number of cubic feet within the meaning of the statute is, I think, rightly stated in the

case, that is (assuming the building to be of regular form) to multiply the horizontal area by the height. This will show its capacity in cubic feet less the portion enclosed by the raised roof. The fire which has destroyed the roof and a little part of the walls has so far lessened the capacity of the building in cubic feet, but it has not reduced it to one-half its former capacity.

The capacity is in my view measured by the external dimensions only. The destruction of the whole interior, whatever be the number of walls or divisions or rooms, does not affect or reduce the cubic measurement of the building. As the space enclosed by the remaining external walls now is far more than half the space enclosed by the building when entire, it is not, as I take it, brought within the operation of the new Act. Had more than half the external walls been burnt down by fire, I do not think an exemption could well have been claimed on the ground that the building had not been "taken down."

It would, however, be prudent for Mr. Kendall, if he wishes to avoid taking on himself the responsibility of letting the premises be built up as before, to give the builder notice to pull down the existing portions which are not in compliance with the new Act, basing his notice on the assumption that the building has been taken down to the extent exceeding one-half, and on the builder's refusal to comply with such notice, to take the matter by arrangement before a magistrate for his decision.

F. RUSSELL.

2, HARE COURT, TEMPLE
Dec. 1, 1860.

XI. Whenever any old buildings are separated by timber or other partitions not in conformity with this Act, then, if such partitions are removed to the extent of one-half thereof, such buildings shall as respects the separation thereof be deemed to be new buildings, and be forthwith divided from each other in the manner directed by this Act.

Division of
old buildings
separated by
irregular
partitions

The advantages of being free from the Act are so palpable as hardly to require mentioning, but as Mr. Woolrych has considered it necessary, I give his words:—

"They are free from the demands and requirements of the Act. They can be altered, added to, pulled down, or otherwise dealt with at pleasure. New buildings of the same kind can be raised. The nature of the walls need not be governed by any proper rules as to thickness of proportion, provided they be not dangerous. Other portions of such buildings may be erected without reference to any particular mode of architecture. The works need not be supervised by district surveyors, and they are independent of the Board of Works. It follows that such works may be done without notice to the district surveyor, from whose proceedings and demands in respect of fees they are exempt. But the

exemption ceases if the building be dangerous; in other words, that portion of the Act which guards against the peril of ruinous erections intervenes as soon as upon survey it is certified that danger exists. All these structures will in that case be regulated by the second division of this statute.

"2ndly. As to public buildings. They are expressly exempted from the operation of the first part of the Act; but this exemption is modified by section 30, which contains a saving clause as to their construction. That clause, recognising full liberty from specific rules of building, compels the architect, notwithstanding to obtain the approval on the part of the district surveyor of the work. In the event of disagreement, the powers of the Metropolitan Board are to be called into action. The notice to the surveyor and the payment of his fees are consequent upon this modification. But the builder is not tied to the precision required in regard to other buildings.

"If the public building become dangerous, it will be placed under the management pointed out by the second part of the Act.

"But the exemptions will carry within their limit all new structures and works of the same character as those mentioned, as new bridges, &c."

WALLS.

Structure and
thickness of
walls.

XII. Walls shall be constructed of such substances and of such thickness and in such manner as are mentioned in the first schedule annexed hereto.

I give the schedule, and plates fully illustrating the schedule.

Note.—The district surveyor must also see that walls, in addition to their being in accordance as to thickness and height with this Act, are also constructed as required by the Bye-laws, page 132.

FIRST SCHEDULE.

PRELIMINARY.

Structure of
buildings.

Construction
of walls of
brick, stone,
&c.

1. Every building shall be enclosed with walls constructed of brick, stone, or other hard and incombustible substances, and the foundations shall rest on the solid ground, or upon concrete or upon other solid substructure.

2. Every wall constructed of brick, stone, or other similar substances shall be properly bonded and solidly put together with mortar or cement, and no part of such wall shall overhang any part underneath it, and all return walls shall be properly bonded together.

Numerous cases have been decided as to improper bricks and improper mortar. I append a few.

March, 1878.

On the 19th inst., Mr. S. Belsten, a builder, appeared before Mr. Paget at the Hammersmith Police Court to show cause why he should not take down portions of two walls of a building in course of erection by him in Becklow Road, Shepherd's Bush, as required by a summons taken out by Mr. T. E. Knightley, district surveyor for Hammersmith.

The district surveyor stated that the walls in question were constructed mainly of soft and broken bricks, and not properly bonded and solidly put together as required by the Building Act. He produced a sample of the material used and showed how impossible it was with such stuff to form bonded work. He had complained of its use from time to time, had served a notice on defendant to amend, which had been disregarded, and he now asked for an order for the demolition of the portion complained of. He called as his witness his assistant, Mr. William Holditch Stevens, who said he had accompanied Mr. Knightley on several occasions when complaints of the quality of the work had been made; he was present when the sample was taken from the building, and believed that produced to be a fair sample, adding his opinion that such material was wholly unsuited for building walls as required by the Act.

The defence was that piers had been built to add to the strength of the walls, and that the parts condemned were not worse than the remainder. The bricklayer employed on the work was called by defendant, and stated as his belief that a better wall could be built with the materials complained of by the district surveyor than could be built with sound bricks.

The magistrate thought that defendant's first argument went for nothing, because the district surveyor, in not condemning the whole of the walls, instead of a part only, may have neglected his duty. He must confine himself to the parts actually complained of. Having questioned the bricklayer's opinion that a wall built with broken bricks could be better than if built with sound ones, he read the summons, adding, "The evidence shows me that the walls are unsafe walls, not built with bricks of a particular size in accordance with the Act of Parliament; accidents have recently happened through building in this way, *and I shall make an order as prayed, with costs, the order to be complied with within fourteen days.*"

CLERKENWELL, Saturday, 13th April, 1878.

Mr. Francis Light, of 21, Thornhill Crescent, Barnsbury, was summoned by Mr. J. Goldicutt Turner, deputy district surveyor for East Islington, for erecting the party wall between the first and second houses east from Turle Road, on the south side of Thorpdale Road, improperly bonded and not of bricks at least 8½ inches in length.

Mr. Turner produced specimens of the materials ("bats," &c.), with which the bulk of the wall was being constructed; he also showed the

magistrate bricks laid in proper bond, and a specimen as far as size was concerned of the bricks required by the Act. Mr. Turner stated that notwithstanding the statutory notices to amend, and the summons taken out, besides several letters which he had written to defendant requesting him to desist, defendant was still proceeding with the wall in question.

Mr. Frederick Wallen, architect, confirmed Mr. Turner's evidence, and said it was the worst wall he had ever seen.

Defendant called his bricklayer and carpenter, who both said the wall was a good one and properly built.

The magistrate, Mr. Barstow, *ordered defendant to pull down and amend the wall within seven days and pay costs of the proceedings.*

Another case is reported in the *Metropolitan* of November 30th, 1878, as follows:—

A summons was heard before Mr. Paget at the Hammersmith Police Court on Tuesday, which had been taken out by Mr. T. E. Knightley, district surveyor of Hammersmith, against Mr. Isaac Mears, of 8, Burfield Street, Hammersmith, to enforce compliance with the provisions of the Building Act in regard to the mortar being used in the erection of houses in Bassein Park Road, under Mr. Mears' superintendence. The district surveyor stated that defendant, in erecting the aforesaid houses, had failed to comply with section 12 and with rule 2 of the first schedule of the Act, which requires that brickwork should be solidly put together with mortar or cement. Instead of using "mortar" compounded of lime one part and sand three parts, a very inferior substitute had been used, composed mainly of vegetable soil slightly charred during the process of burning bricks. He had frequently remonstrated with him, and complained that the good sand with which the neighbourhood abounds had been dug out and sent away instead of being used in the buildings. Decided cases on the subject were referred to, Mr. Knightley taking occasion to say he had, after immense trouble, a time back, succeeded in getting a decision at this court on the question of "mortar." He called his assistant, Mr. William Holditch Stevens, who said he was with Mr. Knightley when the samples produced were taken from the buildings, from materials in use at that time. Defendant asked witness whether pargeting mortar had not been mistaken for other mortar, but witness was able to speak to the sample having been taken from the brickwork, it bearing the impress of the brick upon it. Witnesses were called by defendant, who thought worse mortar might be used, but admitted to a great difference existing between it and a sample of good "mortar" produced by Mr. Knightley. Mr. Paget said he happened to know what "mortar" was, and how it should be made. It should consist of lime and sand only, mixed with water, and it was clear that defendant's "mortar" contained other unsuitable ingredients. *He should make his order as prayed for the demolition of the portions complained of, allowing the district surveyor his costs.*

3. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed for stone walls in the rules hereinafter contained. Extra thickness of certain stone walls.

4. The thickness of every wall as hereinafter determined shall be the minimum thickness. Thickness of walls.

5. The height of every topmost story shall be measured from the level of its floor up to the under side of the tie of the roof, or up to half the vertical height of the rafters, when the roof has no tie; and the height of every other story shall be the clear height of such story, exclusive of the thickness of the floor. Height of story.

6. The height of every external and party wall shall be measured from the base of the wall to the level of the top of the topmost story. Height of external and party walls.

7. Walls are deemed to be divided into distinct lengths by return walls, and the length of every wall is measured from the centre of one return wall to the centre of another; provided that such return walls are external, party, or cross walls of the thickness hereinafter required, and bonded into the walls so deemed to be divided. Length of walls.

8. The projection of the bottom of the footing of every wall, on each side of the wall, shall be at least equal to one-half of the thickness of the wall at its base; and the diminution of the footing of every wall shall be formed in regular offsets, and the height from the bottom of such footing to the base of the wall shall be at the least equal to one-half of the thickness of the wall at its base. Footings of walls.

MISCELLANEOUS.

1. The thickness of a cross wall shall be two-thirds of the thickness hereinbefore required for an external or party wall of the same dimensions, and belonging to the same class of buildings, but never less than $8\frac{1}{2}$ inches; and no wall subdividing any building shall be deemed to be a cross wall unless it is carried up to two-thirds of the height of the external or party walls, and unless the recesses and openings therein do not exceed one-half of the vertical surface of the wall in each story. Cross walls.

Note.—See plate 18 for illustration of cross walls.

Extra thickness of certain stone walls.

2. The thickness of every stone wall in which the beds of the masonry are not laid horizontally shall be one-third greater than the thickness prescribed in the rules aforesaid.

3. Buildings to which the preceding rules are inapplicable require the special sanction of the Metropolitan Board of Works.

FIRST SCHEDULE.—PART I.

RULES FOR THE WALLS OF DWELLING HOUSES.

Thickness of walls of dwelling houses.

1. The external and party walls of dwelling houses shall be made throughout the different stories of the thickness shown in the following Table, arranged according to the heights and lengths of the walls, and calculated for walls up to 100 feet in height, and supposed to be built of bricks not less than $8\frac{1}{2}$ inches and not more than $9\frac{1}{2}$ inches in length, the heights of the stories being subject to the condition hereinafter given.

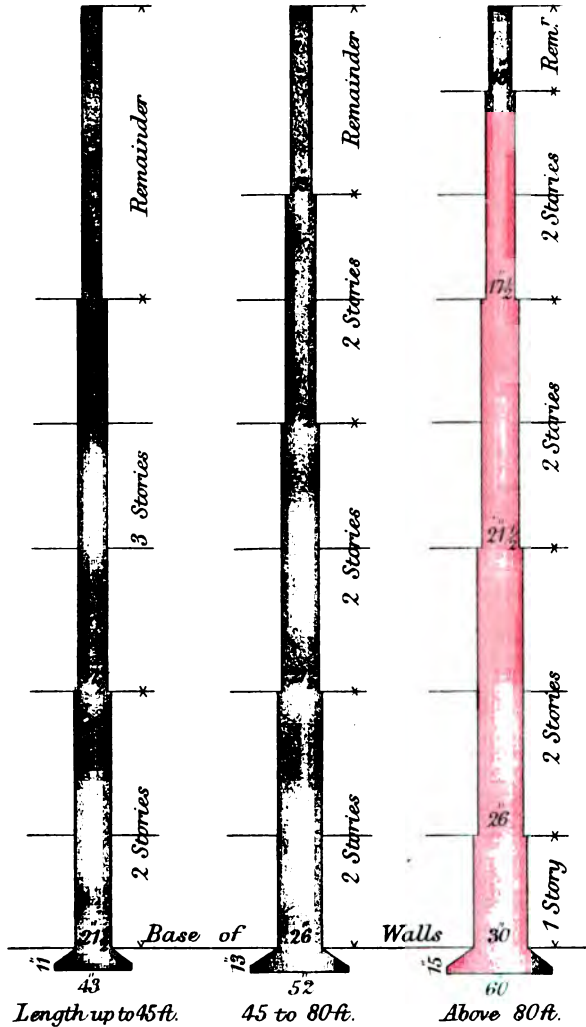
2. TABLE.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 45 Feet. Two Stories, $21\frac{1}{2}$ Inches. Three Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length up to 80 Feet. Two Stories, 26 Inches. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length unlimited. One Story, 30 Inches. Two Stories, 26 Inches. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.
Height up to 90 Feet.	Length up to 45 Feet. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length up to 70 Feet. One Story, 26 Inches. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length unlimited. One Story, 30 Inches. Two Stories, 26 Inches. One Story, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.
Height up to 80 Feet.	Length up to 40 Feet. One Story, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length up to 60 Feet. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length unlimited. One Story, 26 Inches. Two Stories, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.

DWELLING HOUSE WALLS.

90 to 100 feet high.

Party & External walls have the same thickness.



1

2

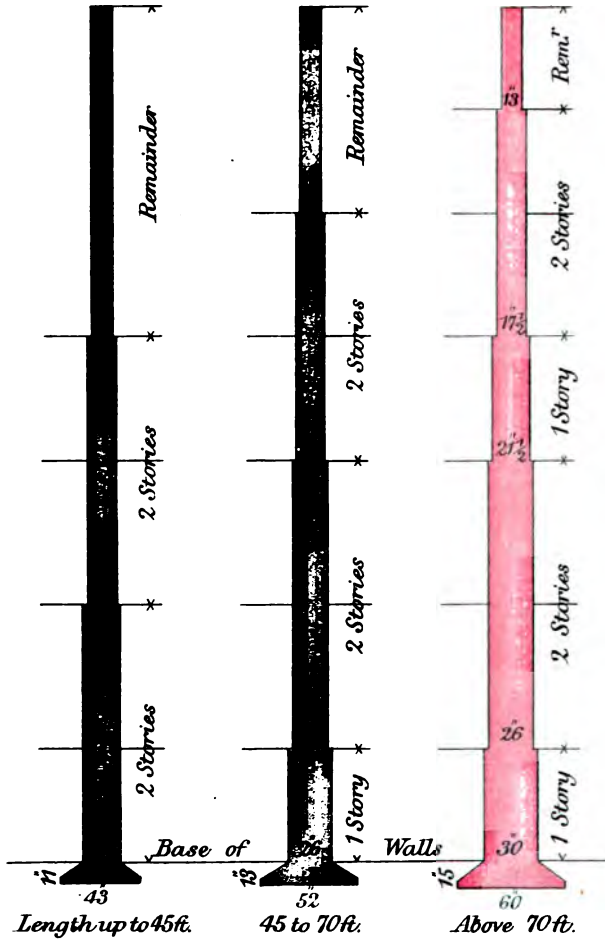
3

4

DWELLING HOUSE WALLS.

80 to 90 feet high.

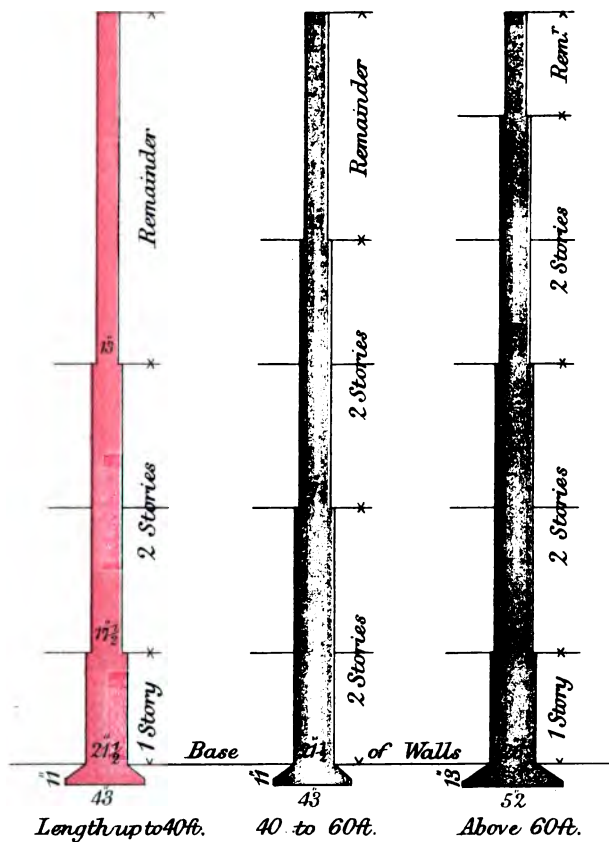
Party & External walls have the same thickness.



DWELLING HOUSE WALLS.

70 to 80 feet high.

Party & External walls have the same thickness.



DWELLING HOUSE WALLS.

60 to 70 feet high.

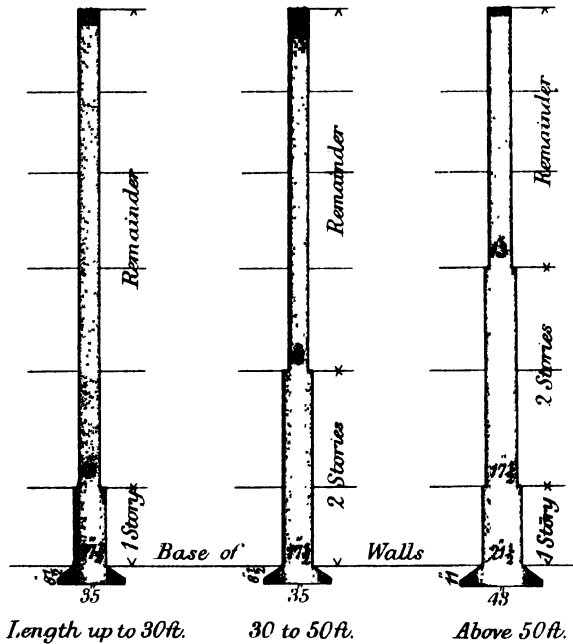
Party & External walls have the same thickness.



DWELLING HOUSE WALLS.

50 to 60 feet high.

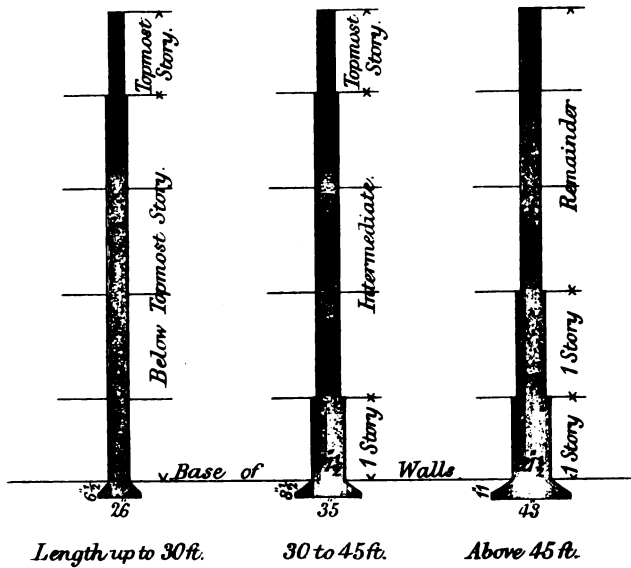
Party & External walls have the same thickness.



DWELLING HOUSE WALLS.

40 to 50 feet high.

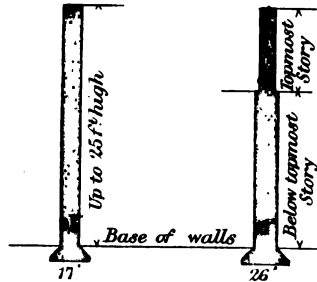
Party & External walls have the same thickness.



DWELLING HOUSE WALLS.

Party & External walls have the same thickness.

Up to 25 feet high.



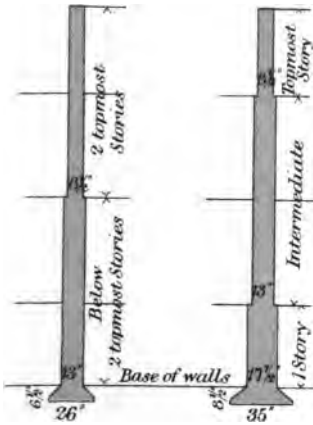
30 to 40 feet high.

Length up to 30 feet.

Above 30 feet.

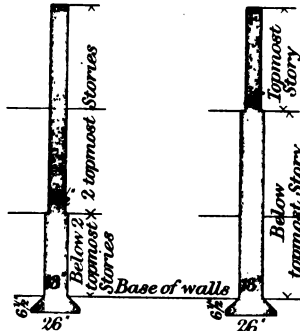
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25 to 30 feet high.



Length up to 35 feet.

Above 35 feet.



Up to 35 feet.

Above 35 feet.

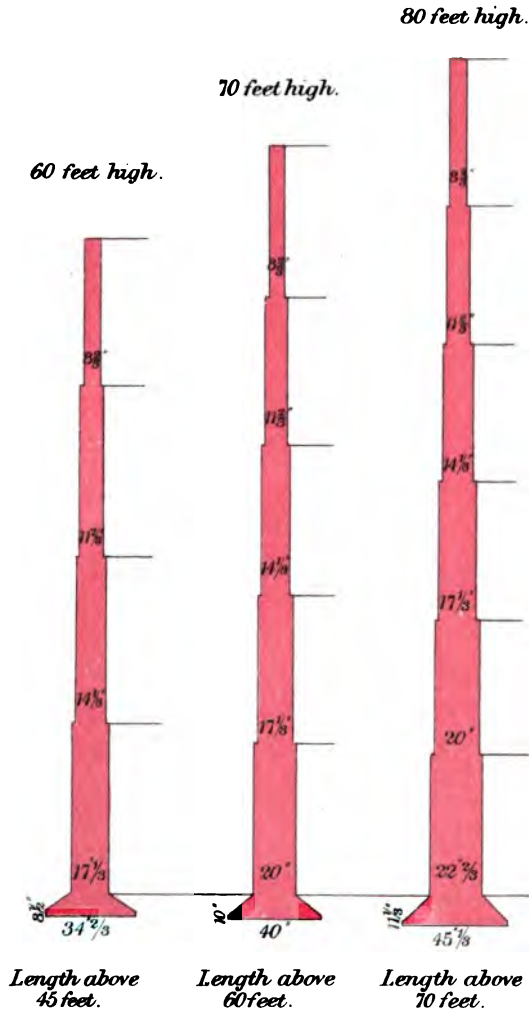
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8



SECTIONS OF CROSS WALLS,
WAREHOUSE CLASS.

Least thickness of front wall above.



I.	II.	III.	IV.
Height up to 70 Feet.	Length up to 40 Feet. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length up to 55 Feet. One Story, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length unlimited. One Story, 26 Inches. Two Stories, $21\frac{1}{2}$ Inches. One Story, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.
Height up to 60 Feet.	Length up to 30 Feet. One Story, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length up to 50 Feet. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.	Length unlimited. One Story, $21\frac{1}{2}$ Inches. Two Stories, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.
Height up to 50 Feet.	Length up to 30 Feet. Wall below the Topmost Story, 13 Inches. Topmost Story, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	Length up to 45 Feet. One Story, $17\frac{1}{2}$ Inches. Rest of Wall below Topmost Story, 13 Inches. Topmost Story, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	Length unlimited. One Story, $21\frac{1}{2}$ Inches. One Story, $17\frac{1}{2}$ Inches. Remainder, 13 Inches.
Height up to 40 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 Inches. Two Topmost Stories, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	Length unlimited. One Story, $17\frac{1}{2}$ Inches. Rest of Wall below Topmost Story, 13 Inches. Topmost Story, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	
Height up to 30 Feet.	Length up to 35 Feet. Wall below Two Topmost Stories, 13 Inches. Two Topmost Stories, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	Length unlimited. Wall below Topmost Story, 13 Inches. Topmost Story, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	
Height up to 25 Feet.	Length up to 30 Feet. From Base to Top of Wall, $8\frac{1}{2}$ Inches.	Length unlimited. Wall below Topmost Story, 13 Inches. Topmost Story, $8\frac{1}{2}$ Inches. Remainder, $8\frac{1}{2}$ Inches.	

3. In using the above Table the height of the wall is to be reckoned on the first vertical column on the left hand of the Table, and the length of the wall on the corresponding horizontal column. The thickness of the wall in each story is given in inches, and begins with the wall from the base upwards.

Explanation of Table.

4. If any external or party wall, measured from centre to centre, is not more than 25 feet distant from any

Qualification in case of certain walls.

Condition in respect of stories exceeding a certain height.

Restriction in case of certain stories.

Thickness of walls built of materials other than such bricks as aforesaid.

Rules as to buildings not being public buildings or buildings of the warehouse class.

other external or party wall to which it is tied by the beams of any floor or floors, other than the ground floor, or the floor of any story formed in the roof, the length of such wall is not to be taken into consideration, and the thickness of the wall will be found in the second vertical column in the above Table.

5. If any story exceeds in height sixteen times the thickness prescribed for the walls of such story in the above Table, the thickness of each external and party wall throughout such story shall be increased to one-sixteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one-fourth part of the length of the wall.

6. No story enclosed with walls less than 13 inches in thickness shall be more than 10 feet in height.

7. The thickness of any wall of a dwelling house, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above Tables, or of such less thickness as may be approved by the Metropolitan Board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the aforesaid rules for such last-mentioned walls.

8. All buildings, excepting public buildings, and such buildings as are hereinafter defined to be buildings of the warehouse class, shall, as respects the thickness of their walls, be subject to the rules given for dwelling houses.

FIRST SCHEDULE.—PART II.

RULES FOR THE WALLS OF BUILDINGS OF THE WAREHOUSE CLASS.

Definition of warehouse class.
Thickness at base.

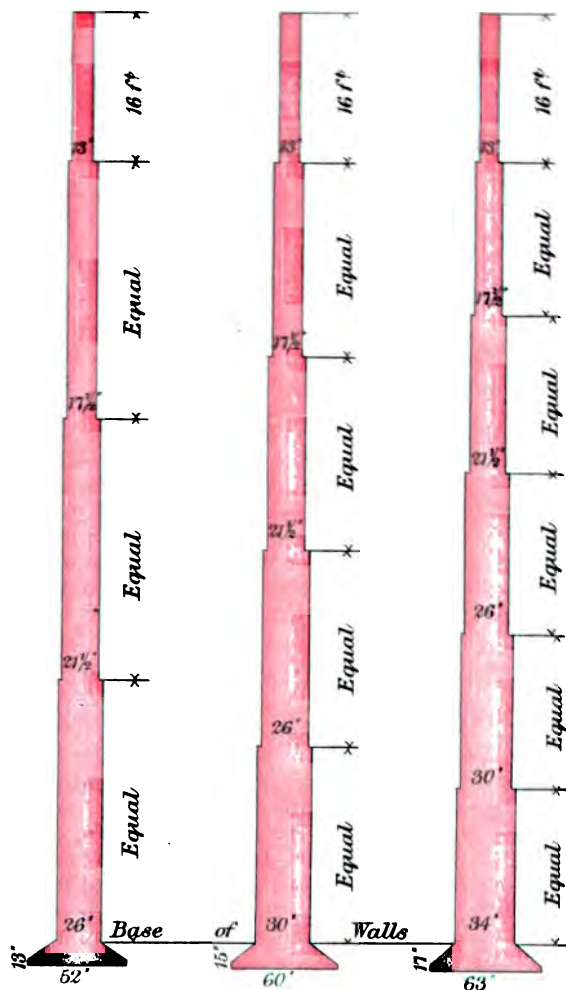
1. The warehouse class shall comprise all warehouses, manufactories, breweries, and distilleries.

2. The external and party walls of buildings of the warehouse class shall at the base be made of the thickness shown in the following Table, calculated for walls up to 100 feet in height, and supposed to be built of bricks not less than $8\frac{1}{2}$ inches and not more than $9\frac{1}{2}$ inches in length.

WAREHOUSE WALLS.

30 to 100 feet high.

Party & External walls have the same thickness.



Length up to 55 f"

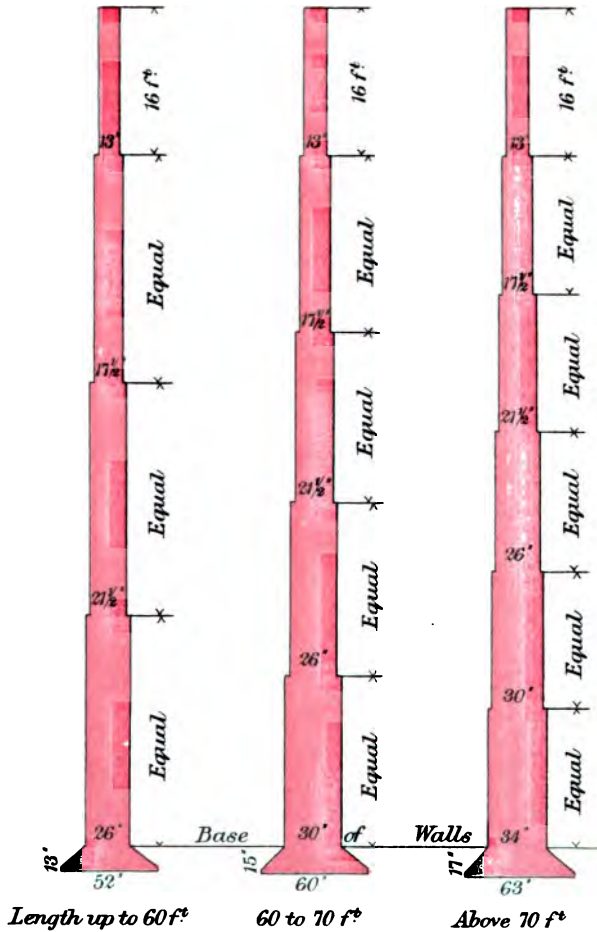
55 to 70 f"

Above 70 f"

WAREHOUSE WALLS.

80 to 90 feet high.

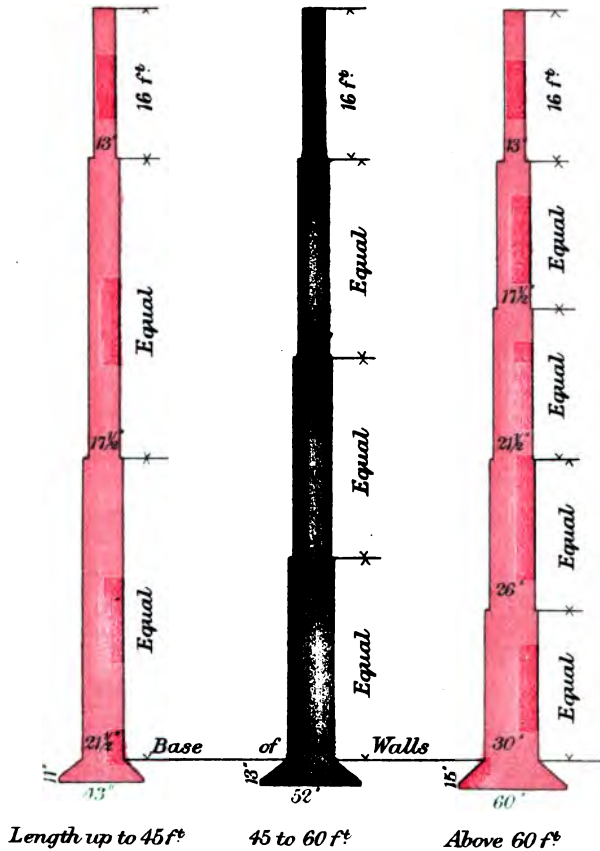
Party & External walls have the same thickness.



WAREHOUSE WALLS.

70 to 80 feet high.

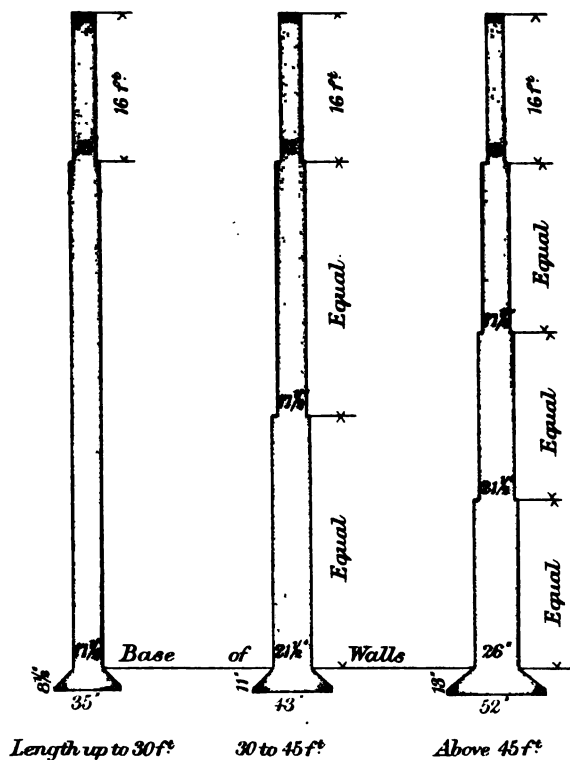
Party & External walls have the same thickness.



WAREHOUSE WALLS.

60 to 70 feet high.

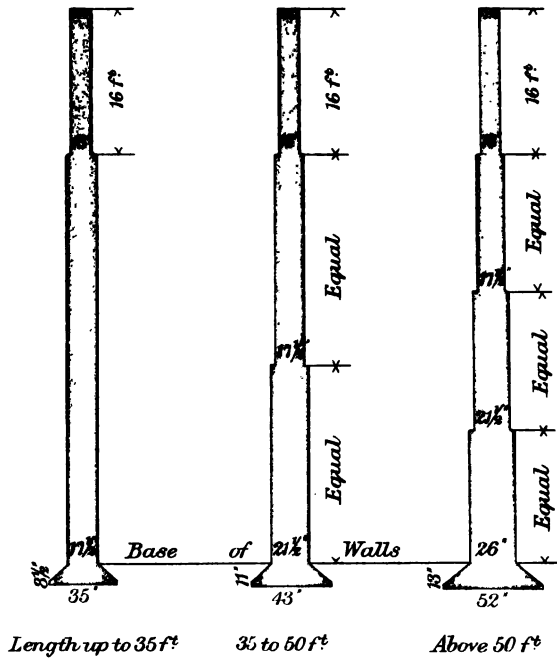
Party & External walls have the same thickness.



WAREHOUSE WALLS.

50 to 60 feet high.

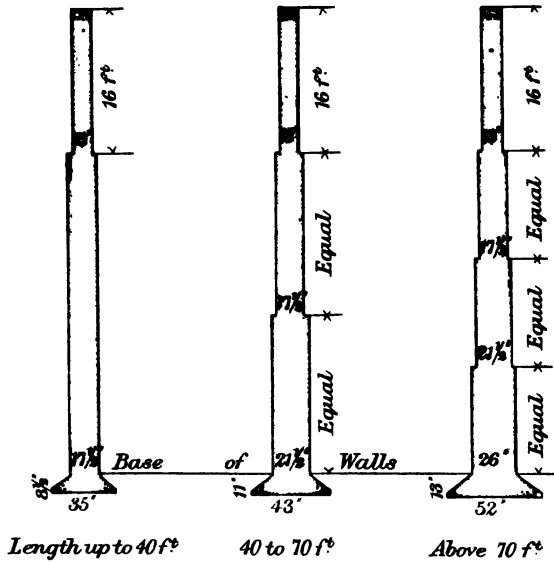
Party & External walls have the same thickness.



WAREHOUSE WALLS.

40 to 50 feet high.

Party & External walls have the same thickness.

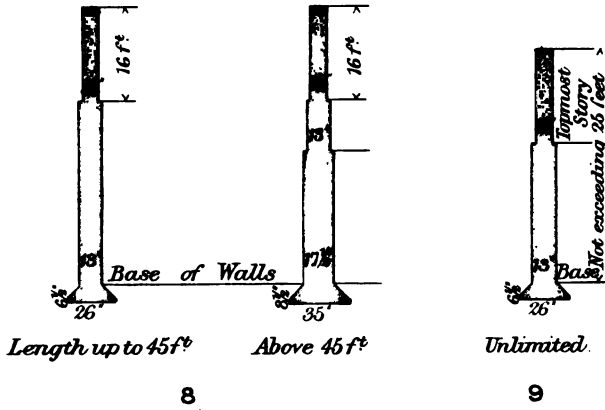


WAREHOUSE WALLS.

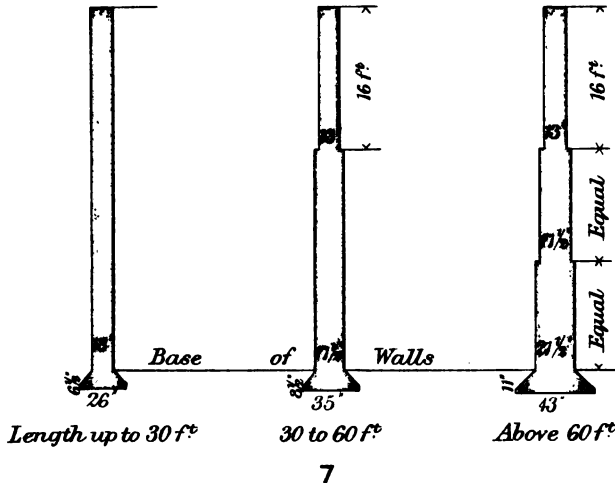
Party & External walls have the same thickness.

25 to 30 feet high.

Up to 25 feet high.



30 to 40 feet high.



3. TABLE.

I.	II.	III.	IV.
Height up to 100 Feet.	Length up to 55 Feet. Base, 26 Inches.	Length up to 70 Feet. Base, 30 Inches.	Length unlimited. Base, 34 Inches.
Height up to 90 Feet.	Length up to 60 Feet. Base, 26 Inches.	Length up to 70 Feet. Base, 30 Inches.	Length unlimited. Base, 34 Inches.
Height up to 80 Feet.	Length up to 45 Feet. Base, 21½ Inches.	Length up to 60 Feet. Base, 26 Inches.	Length unlimited. Base, 30 Inches.
Height up to 70 Feet.	Length up to 30 Feet. Base, 17½ Inches.	Length up to 45 Feet. Base, 21½ Inches.	Length unlimited. Base, 26 Inches.
Height up to 60 Feet.	Length up to 35 Feet. Base, 17½ Inches.	Length up to 50 Feet. Base, 21½ Inches.	Length unlimited. Base, 26 Inches.
Height up to 50 Feet.	Length up to 40 Feet. Base, 17½ Inches.	Length up to 70 Feet. Base, 21½ Inches.	Length unlimited. Base, 26 Inches.
Height up to 40 Feet.	Length up to 30 Feet. Base, 13 Inches.	Length up to 60 Feet. Base 17½ Inches.	Length unlimited. Base, 21½ Inches.
Height up to 30 Feet.	Length up to 45 Feet. Base, 13 Inches.	Length unlimited. Base, 17½ Inches.	
Height up to 25 Feet.	Length unlimited. Base, 17½ Inches.		

4. The above Table is to be used in the same manner as the Table previously given for the walls of dwelling houses, and is subject to the same qualifications and conditions respecting walls not more than 25 feet distant from each other.

5. The thickness of the walls of buildings of the warehouse class at the top, and for 16 feet below the top, shall be 13 inches; and the intermediate parts of the wall between the base and such 16 feet below the top

Explanation of Table.

Thickness at top of walls and through intermediate space.

shall be built solid throughout the space between straight lines drawn on each side of the wall, and joining the thickness at the base to the thickness at 16 feet below the top, as above determined; nevertheless in walls not exceeding 30 feet in height the walls of the topmost story may be $8\frac{1}{2}$ inches thick.

Condition in respect of stories exceeding a certain height.

6. If in any story of a building of the warehouse class the thickness of the wall, as determined by the rules hereinbefore given, is less than one-fourteenth part of the height of such story, the thickness of the wall shall be increased to one-fourteenth part of the height of the story; but any such additional thickness may be confined to piers properly distributed, of which the collective widths amount to one-fourth part of the length of the wall.

Thickness of walls built of materials other than such bricks as aforesaid.

7. The thickness of any wall of a building of the warehouse class, if built of materials other than such bricks as aforesaid, shall be deemed to be sufficient if made of the thickness required by the above Table, or of such less thickness as may be approved by the Metropolitan Board, with this exception, that in the case of walls built of stone in which the beds of the masonry are not laid horizontally no diminution shall be allowed in the thickness required by the foregoing rules for such last-mentioned walls.

RECESSES AND OPENINGS.

Rules as to recesses and openings.

XIII. The following rules shall be observed with respect to recesses and openings in walls:

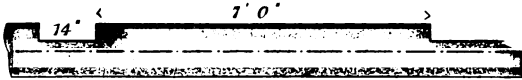
Recesses and openings may be made in external walls, provided—

1. That the backs of such recesses are not of less thickness than $8\frac{1}{2}$ inches; and,
2. That the area of such recesses and openings do not, taken together, exceed one-half of the whole area of the wall in which they are made:

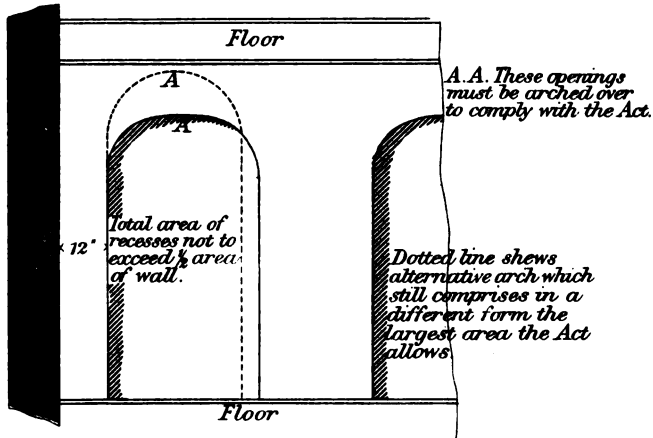
Recesses may be made in party walls, provided that,

1. The backs of such recesses are not of less thickness than 13 inches; and
2. That every recess so formed is arched over, and that the area of such recesses do not, taken alto-

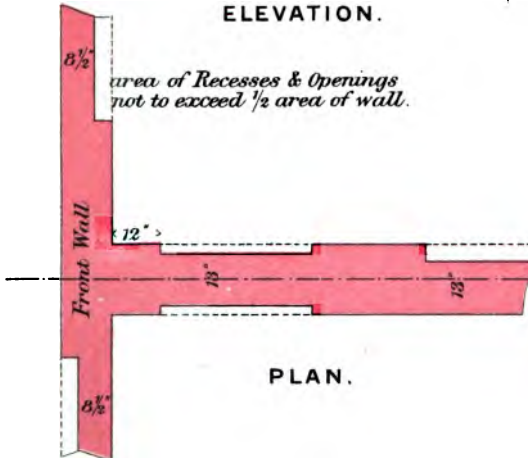
RECESSES IN EXTERNAL & PARTY WALLS, & CHASES IN PARTY WALLS.



Plan shewing greatest size of chase and least distance to another.



ELEVATION.



PLAN.

gether, exceed one-half of the whole area of the wall of the story in which they are made; and

3. That such recesses do not come within 1 foot of the inner face of the external walls.

I give illustrations of them on plate 17, as probably no method so quickly explains to those accustomed to drawings. I show recesses in party and external walls and chases, and give different-shaped arched recesses, each occupying the largest area the Act sanctions.

But no opening shall be made in any party wall except in accordance with the rules of this Act:

The word area, as used in this section, shall mean the area of the vertical face, or elevation, of the wall, pier, or recess to which it refers.

MISCELLANEOUS.

XIV. Loophole frames may be fixed within $1\frac{1}{2}$ inch of the face of any external wall; but all other woodwork fixed in any external wall, except bressummers and story posts under the same, and frames of doors and windows of shops on the ground story of any building, shall be set back 4 inches at the least from the external face of such wall.

As to timber in external walls.

XV. The following rules shall be observed with respect to bressummers and timbers:—

Rules as to bressummers.

1. Every bressummer must have a bearing in the direction of its length of 4 inches at the least at each end, upon a sufficient pier of brick or stone, or upon a timber or iron story post fixed on a solid foundation, in addition to its bearing upon any party wall; and the ends of such bressummer shall not be placed nearer to the centre line of the party walls than $4\frac{1}{2}$ inches.

The case of *neglecting to build proper pier* was decided by the magistrate in December 1879. I quote the case as given in the *Metropolitan* on the 27th of that month.

On Wednesday, at Lambeth, Henry George, builder, Cranham Street, was summoned by Mr. Jarvis, district surveyor, under the Metropolitan Building Acts, for not complying with the 15th section of the statute in two houses in Rye Lane, Peckham. Mr. J. Thompson, barrister, appeared in support of the summons, and stated that the iron bressummer must have a brick or stone pier, or be placed upon a

wooden or iron story post in addition to the bearing on the party wall. The defendant declared he had put all that was required. The object of the Act was to prevent the use of timber, and he had put in an iron girder. Mr. Jarvis insisted that as the 15th section had not been complied with he was bound to summon the defendant. The absence of what he (Mr. Jarvis) required had caused the accident in Tottenham Court Road. Mr. Chance said the words of the Act had certainly not been complied with, and he must make an order that the work be done within fourteen days. Mr. Thompson asked for costs, and the magistrate ordered a sum of 3*l.* 3*s.* as costs to be paid by the defendant.

2. No bond timber or wood plate shall be built into any party wall, and the ends of any beam or joist bearing on such walls shall be at the least 4½ inches distant from the centre line of the party walls:
3. Every bressummer bearing upon any party wall must be borne by a templet or corbel of stone or iron tailed through at least half the thickness of such wall, and of the full breadth of the bressummer.

Height and thickness of parapets to external walls.

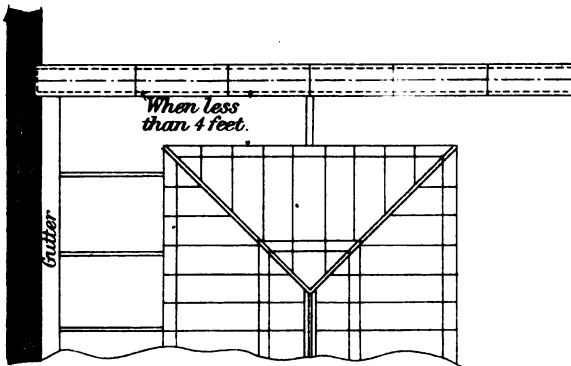
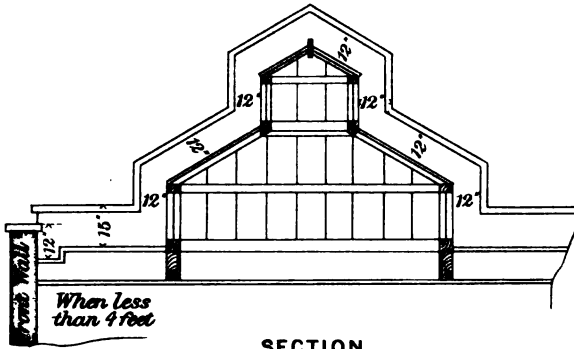
XVI. If any gutter, any part of which is formed of combustible materials, adjoins an external wall, then such wall must be carried up so as to form a parapet 1 foot at the least above the highest part of such gutter, and the thickness of the parapet so carried up must be at the least 8½ inches, reckoned from the level of the under side of the gutter plate.

Height of party walls above roof.

XVII. Every party wall shall be carried up above the roof flat or gutter of the highest building adjoining thereto, to such height as will give a distance of 15 inches, measured at right angles to the slope of the roof, or 15 inches above the highest part of any flat or gutter, as the case may be; and every party wall shall be carried up above any turret, dormer, lantern light, or other erection of combustible materials fixed upon the roof or flat of any building within 4 feet from such party wall, and shall extend at the least 12 inches higher and wider on each side than such erection; and every party wall shall be carried up above any part of any roof opposite thereto, and within 4 feet from such party wall.

As an illustration I give on plate 19 a lantern light, showing the way in which this section requires the wall to be carried out,

LANTERN LIGHT SHEWING NEAREST
POSITION TO PARTY WALL.



XVIII. In a party wall no chase shall be made wider than 14 inches nor more than $4\frac{1}{2}$ inches deep from the face of the wall, nor so as to leave less than $8\frac{1}{2}$ inches in thickness at the back or opposite side thereof, and no chase may be made within a distance of seven feet from any other chase on the same side of the wall.

As to chases
in party
walls.

See plan of walls on plate 17, which shows these recesses.

XIX. The roofs of buildings shall be constructed as follows; that is to say,

As to con-
struction of
roofs.

1. The flat, gutter, and roof of every building, and every turret, dormer, lantern light, skylight, or other erection placed on the flat or roof thereof, shall be externally covered with slates, tiles, metal, or other incombustible materials, except the doors, door frames, windows, and window frames of such dormers, turrets, lantern lights, skylights, or other erections:
2. The plane of the surface of the roof of a warehouse or other building, used either wholly or in part for purposes of trade or manufacture shall not incline from the external or party walls upwards at a greater angle than 47 degrees with the horizon.

I give a case bearing on this sub-section. I may mention it is sometimes contended that if the line of the roof does not exceed the angle of 47 degrees if drawn from the top of the parapet, that it is a compliance with the Act; but there is no legal decision warranting this, and it certainly would appear to be contrary to the common-sense reading of this section, which distinctly speaks of the plane of the surface of the roof, and therefore would appear clearly to mean the angle of the roof itself.

CURB ROOFS.

(Extract from the *Builder*, Nov. 9, 1861.)

Mr. Mayhew, district surveyor of St. James's, Westminster, summoned Mr. W. Higgs, builder, at the Marlborough Police Court, in respect of the houses 114 and 115, Jermyn Street, on the ground that he had "fixed on the said building, which is built in order to be used in part for purposes of trade, a roof so constructed that the plane or surface of said roof inclines from the northern external wall of the said building upwards at a greater angle than 47 degrees with the horizon, namely, about 80 degrees."

This was objected to on the ground that the Act only allowed such roofs to "public buildings, dwellings, and warehouses." As this house

was intended for a shop, it was contended that a "shop" was not included within the buildings set forth in the Act. As there were other cases of a similar character in dispute, it was decided to take the opinion of a magistrate on the matter.

Mr. Cates, who attended on behalf of Mr. Higga, argued the case, and urged that the defining words of the section should be read together, and that the building in question—being a dwelling house, with shops on the ground floor—was not used for the purposes of trade within the meaning of the statute.

Mr. Tyrwitt did not see exactly where the line between a shop and a warehouse was to be drawn, nor did he apprehend that the Legislature meant to draw any such line. He was not sure that the terms of the Act did not include houses of all descriptions used for purposes of trade. In his opinion a shop might be both a warehouse and a shop. He thought, however, the proper course would be to dismiss the summons.

A similar summons against Messrs. Trollope for erecting a curb roof at No. 20, Duke Street, was also dismissed.

We next come to the rules relating to chimneys and flues, and after giving the sections and sub-sections of the Act, I give on plate 16. an illustration showing fireplaces in party walls and in external walls, also illustrations showing where arch bar is and is not required, and section showing the height above the mantel that the 9-inch back must be carried; and I then give the cases relating to chimneys and flues—the first case relating to chimneys constructed of drain-pipes; the second to galvanised iron tubing; and the third relating to pargeting, and being a decision in the Exchequer division of the High Court of Justice.

Rules as to
chimneys
and flues.

XX. The following rules shall be observed as to chimneys and flues:

1. Chimneys built on corbels of brick, stone, or other incombustible materials may be introduced above the level of the ceiling of the ground story if the work so corbelled out does not project from the wall more than the thickness of the wall; but all other chimneys shall be built on solid foundations, and with footings similar to the footings of the wall against which they are built:
2. Chimneys and flues having proper doors of not less than 6 inches square may be constructed at any angle, but in every other chimney or flue the angles shall be constructed of an obtuseness of not less than 130 degrees, and shall be properly rounded:
3. An arch of brick or stone or a bar of wrought iron

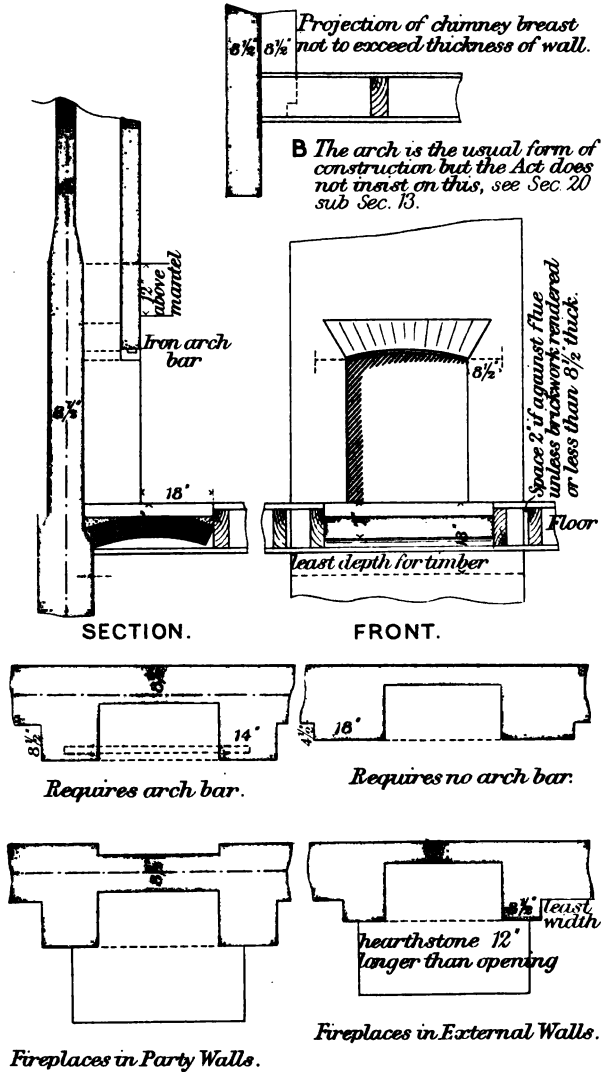
must be built over the opening of every chimney to support the breast thereof, and if the breast projects more than $4\frac{1}{2}$ inches from the face of the wall, and the jamb on either side is of less width than $17\frac{1}{2}$ inches, the abutments must be tied in by an iron bar or bars turned up and down at the ends and built into the jambs for at least $8\frac{1}{2}$ inches on each side :

4. The inside of every flue, and the back or outside, unless forming part of the outer face of an external wall, must be rendered, pargeted, or lined with fireproof piping :
5. The jambs of every chimney must at the least be $8\frac{1}{2}$ inches wide on each side of the opening thereof :
6. The breast of every chimney, and the front, with partition, and back of every flue, must at the least be 4 inches in thickness :
7. The back of every chimney opening, from the hearth up to the height of 12 inches above the mantel, must at the least be $8\frac{1}{2}$ inches thick if in a party wall, or $4\frac{1}{2}$ inches thick if not in a party wall :
8. The thickness of the upper side of every flue, when its course makes, within the horizon, an angle of less than 45 degrees, must be at the least $8\frac{1}{2}$ inches :
9. Every chimney shaft shall be carried up in brick or stone work all round, at the least 4 inches thick, to a height of not less than 3 feet above the roof, flat, or gutter adjoining thereto, measured at the highest point in the line of junction with such roof, flat, or gutter :
10. The brickwork or stonework of any chimney shaft, excepting that of the furnace of any steam engine, brewery, distillery, or manufactory, shall not be built higher above the roof, flat, or gutter adjoining thereto, measured from the highest point in the line of junction with such roof, flat, or gutter, than a height equal to 6 times the least width of such chimney shaft at the level of such highest point in the line of junction, unless such

chimney shaft is built with and bonded to another chimney shaft not in the same line with the first, or otherwise rendered secure :

11. There shall be laid, level with the floor of every story, before the opening of every chimney, a slab of stone, slate, or other incombustible substance, at the least 12 inches longer than the width of such opening, and at the least 18 inches wide in front of the breast thereof :
12. On every floor, except the lowest floor, such slab shall be laid wholly upon stone or iron bearers, or upon brick trimmers ; but on the lowest floor it may be bedded on the solid ground :
13. The hearth or slab of every chimney shall be bedded wholly on brick, stone, or other incombustible substance, and shall be solid for a thickness of 7 inches at the least beneath the upper surface of such hearth or slab :
14. No flue shall be built against any party structure, unless a withe is properly secured thereto, at the least 4 inches in thickness :
15. No chimney breast or shaft built with or in any party wall shall be cut away unless the district surveyor certifies that it can be done without injuriously affecting the stability of any building :
16. No chimney shaft, jamb, breast, or flue shall be cut into except for the purpose of repair, or doing some one or more of the following things :
 - Of letting in or removing or altering flues, pipes, or funnels for the conveyance of smoke, hot air, or steam, or of letting in, removing, or altering smoke jacks :
 - Of forming openings for soot doors, such openings to be fitted with a close iron door and frame :
 - Of making openings for the insertion of ventilating valves, subject to the following restriction, that no opening shall be made nearer than 12 inches to any timber or combustible substance :
17. No timber or woodwork shall be placed,
 - In any wall or chimney breast nearer than

CHIMNEYS & FLUES IN EXTERNAL & PARTY WALLS.



- 12 inches to the inside of any flue or chimney opening ;
- Under any chimney opening within 18 inches from the upper surface of the hearth of such chimney opening ;
- Within 2 inches from the face of the brickwork or stonework about any chimney or flue where the substance of such brickwork or stonework is less than $8\frac{1}{2}$ inches thick, unless the face of such brickwork or stonework is rendered ;
- And no wooden plugs shall be driven nearer than six inches to the inside of any flue or chimney opening, nor any iron holdfast or other iron fastening nearer than 2 inches thereto.

To show the great danger of improperly building flues, more especially in party walls, I give the following, extracted from the *Builder* of April 29th, 1882:—

DANGER FROM CARELESSLY-BUILT FLUES IN PARTY WALLS.

Worth v. Gordon.

This was a case of some interest. It was tried in the Queen's Bench Division of the High Court of Justice on Tuesday, before Mr. Justice Field and a common jury.

The plaintiff occupied a house in Arundel Gardens, Bayswater, and the defendant, one adjoining. On the evening of the 21st of last July the defendant's chimney caught fire. On the same evening a fire broke out in the plaintiff's house, on the drawing-room floor, which floor was damaged by fire.

It appeared that the houses were built about twelve years ago by the same owner, and that a half-brick had been left out in the flue just under the joists of the plaintiff's drawing-room. The fire had made its way through the aperture from the defendant's chimney to the plaintiff's floor.

When, however, it was stated in evidence that the aperture was in the plaintiff's wall, and that the defendant could not by reasonable examination have discovered it, the plaintiff's counsel admitted that the action could not be supported.

Judgment was accordingly entered for the defendant.

CHIMNEY CONSTRUCTED OF DRAIN PIPES.

MARYLEBONE POLICE COURT. Mr. D. RUTZEN, Magistrate.

District Surveyor St. Pancras, West v. Hillyard.

Sections 20 and 21.

October 1879.

Defendant had erected a warehouse at the rear of the kitchen (which was itself an addition) to the house, No. 9, Roxburgh Grove, and had set therein a copper and built a chimney 3 feet above the roof at the end of the new addition farthest from the house, and had set thereon an ordinary chimney pot. Subsequently he had taken off the chimney pot and carried the chimney by means of drain pipes supported on iron bearer across the roofs of the washhouse and kitchen, almost horizontally into an old chimney built against the back wall of the house, with a soot door at the point of junction with the new chimney shaft. The chimney remained in brick 3 feet above the washhouse roof, but in one place where the pipe chimney passed over the kitchen roof it was less than 3 feet above it.

The case was heard (by adjournment) on three separate occasions, and drawings were laid before the magistrate by district surveyor and also by Mr. Clarkson, on behalf of defendant.

The district surveyor relied on section 20 as to chimneys and flues, and contended that the smoke-conducting structure from the new washhouse fire to the top of the main house (including the old chimney into which the new pipes had been let) was now one chimney, and must be carried up to 3 feet above the roof of the main building in brick or stone work according to rule 9; and that it was not competent to the builder to construct a part only in brick, then another part in drain piping, and then complete it in brick.

The magistrate held that the chimney was wrongly built, and adjourned the case to enable the builder to confer with the district surveyor and devise some means of amending it. At the second hearing, the defendant having conferred with the owner and Mr. Clarkson, contended that the new part of the structure from the washhouse chimney to the old one was not subject to section 20, inasmuch as it was a pipe for conveying smoke, and was in accordance with section 21, rule 5, to which the district surveyor rejoined that section 21 was only intended to apply to single pipes leading from small enclosed stoves, such as ironing stoves and the like, and not to such a structure as that in question.

The magistrate again adjourned the case to consider the new point raised by the defendant, and finally agreed with the district surveyor that section 21 did not contemplate or intend to sanction such structures as that in question, which must be considered to be chimneys, and subject to section 20, and made an order to amend the works, which was complied with by the removal of the pipes.

CHIMNEY CONSTRUCTED OF GALVANISED IRON
TUBING.

MARLBOROUGH STREET POLICE COURT. Mr. NEWTON, Magistrate.

District Surveyor St. Pancras, West v. Liddle.

Section 20.

August 1879.

Defendant, in altering the back addition to his premises, No. 81, Tottenham Court Road, had disconnected a chimney which, after passing through the roof of the addition, had been carried within the main building into a chimney heart there, and after forming a shaft in brick 3 feet above the roof of the addition, had then erected an iron tube attached to the back part and also attached by an iron band to the curb of the curbed roof which was within 10 inches of it, and the iron tube was 1 foot above the curb.

The district surveyor contended that it should be constructed of brick or stone work all round, at least 4 inches thick, to a height of 3 feet above the roof of the main building.

The magistrate decided that this iron tube was illegal, and ordered the work to be amended.

PARGETING.

Times, June 28, 1879.

EXCHEQUER DIVISION.

Sittings in Banco before the L.C. BARON and Mr. J. STEPHENS.

Jennings v. Duncan.

Mr. Masterman argued for the appellant, Mr. Crispe for the respondent.

This was a case stated on appeal by Mr. Cooke, one of the metropolitan magistrates, who declined to order the respondent to render or parget the flue of a chimney in the New Mission Hall, York Court, South Street, Marylebone. The appellant, who is a district surveyor, contends that not only must the inside of the flue be lined with fire-proof or rendered, but also that the exterior surface towards the room must be pargeted, under the Metropolitan Building Act, 18 & 19 Vict. c. 122, s. 20, sub-sec. 4, the point turning on the words inside or back or outside.

Mr. Masterman submitted that this Act was meant to protect the metropolis from fire, and wherever the flames could come there ought to be a layer of this pargeting, which is a composition of cow-dung and plaster. The magistrate seemed to think that it was enough if precaution was taken not to set a neighbour's house on fire, but that a person was at liberty to set fire to his own if he liked.

Mr. Crispe urged his client had sufficiently complied with the provisions of the Act, and was not compelled to place this unsightly plaster in zigzags up the line of the flue, destroying what was already finished with ornamental bricks.

The Lord Chief Baron said that the learned counsel for the appellant had displayed great ingenuity; but it seemed to him that the respondent had done all the Act required him *to do by lining the inside of the flue with "pargeting."* He should therefore not be called on to do anything more. The Act only spoke of one "back or outside," not "backs or outer sides."

Mr. Justice Stephen was of the same opinion. He would add that this demand seemed made through a desire to keep on foot the provisions of repealed statutes, because they were supposed to afford greater security against fire. Some violence was therefore sought to be done to the provisions of this Act. The earlier Acts, 14 Geo. III. and 7 & 8 Vict. c. 84, had imposed more stringent obligations on the builders of houses in the matter of "pargeting;" but this Act seemed a good deal narrower, and these obligations were diminished. Whether this was wise or not was quite another question.

Appeal dismissed with costs.

This decision, I may mention, is in accordance with my usual practice.

Rules as to
close fires,
and pipes for
conveying
vapour, &c.

XXI. The following rules shall be observed as to close fires, and pipes for conveying heated vapour or water; that is to say,

1. The floor under every oven or stove used for the purpose of trade or manufacture, and the floor around the same for a space of 18 inches, shall be formed of materials of an incombustible and non-conducting nature:
2. No pipe for conveying smoke, heated air, steam, or hot water shall be fixed against any building on the face next to any street, alley, mews, or public way:
3. No pipe for conveying heated air or steam shall be fixed nearer than 6 inches to any combustible materials:
4. No pipe for conveying hot water shall be placed nearer than 3 inches to any combustible materials:
5. No pipe for conveying smoke or other products of combustion shall be fixed nearer than 9 inches to any combustible material.

And if any person fails in complying with the Rules of this section he shall for each offence incur a penalty

not exceeding twenty pounds, to be recovered before a Justice of the Peace.

This section is varied as follows by the action of the Metropolis Management and Building Acts Amendment Act, 1882.

From and after the passing of this Act the restrictions imposed by the twenty-first section of the Metropolitan Building Act, 1855, with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of conveying hot water or steam at low pressure.

Amendment of provisions of 18 & 19 Vict. c. 122, s. 21, with respect to hot water pipes.

XXII. The following rules shall be observed with respect to accesses and stairs :

Rules as to accesses and stairs in certain buildings.

In every public building, and in every other building containing more than 125,000 cubic feet, and used as a dwelling house for separate families, the floors of the lobbies, corridors, passages, and landings, and also the flights of stairs, shall be of stone or other fireproof material, and carried by supports of a fireproof material.

XXIII. The following rules shall be observed with respect to habitable rooms in any building; that is to say,

Rules as to habitable rooms.

1. Every habitable room hereafter constructed in any building, except rooms in the roof thereof and cellars and underground rooms, shall be in every part at the least 7 feet in height from the floor to the ceiling :
2. Every habitable room hereafter constructed in the roof of every building shall be at the least 7 feet in height from the floor to the ceiling throughout not less than one-half the area of such room.

I give an illustration on plate 21, showing the least height the Act permits, which I think will be useful to the reader.

The only recent case I can find is one at Hammersmith Police Court.

On the 25th June, 1880, at Hammersmith Police Court, Mr. James Harvey, a builder, was summoned by Mr. Knightley, the district surveyor of Hammersmith, in respect of rooms which he had constructed in five houses in Hawthorne Terrace, Shepherd's Bush, contrary to the Act. The defendant said they were box-rooms, and not intended for

habitation. Mr. Knightley said the rooms were approached in the usual way by staircases. There were windows in the rooms. The defendant pointed out that there were no grates in them. Mr. Partidge held that the rooms were not habitable, and made an order to stop them up.

3. Cellars and underground rooms shall be constructed in manner directed by the said Act for the better Local Management of the Metropolis :

And whosoever knowingly suffers any room that is not constructed in conformity with this section to be inhabited shall, in addition to any other liabilities he may be subject to under this Act, incur a penalty not exceeding twenty shillings for every day during which such room is inhabited; and any room in which any person passes the night shall be deemed to be inhabited within the meaning of this Act.

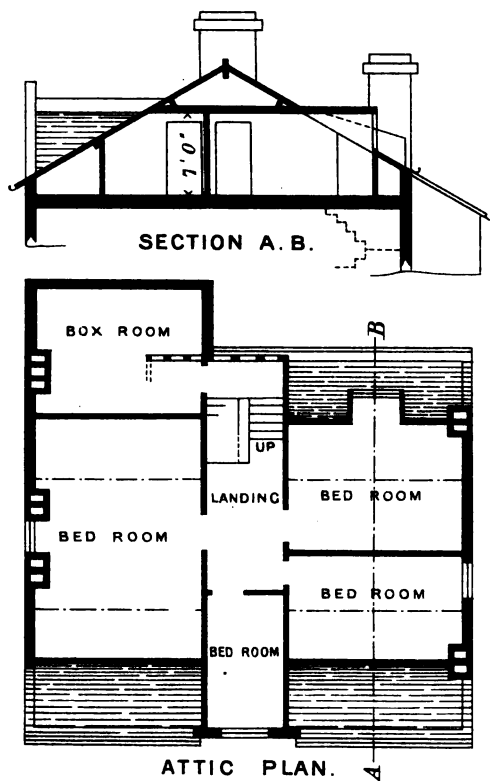
I give the sections in the Metropolis Management Act, 1855, relating to vaults.

CII. All vaults, arches, or cellars, made either before or after the commencement of this Act under any street in any parish or district mentioned in either of the schedules (A) and (B) to this Act, and all openings into the same in any such street shall be repaired and kept in proper order by the owners or occupiers of the houses or buildings to which the same respectively belong, and in case any such vault, arch, or cellar be at any time out of repair, it shall be lawful for the vestry or district board of such parish or district to cause the same to be repaired and put into good order and to recover the expenses thereof from such owner in the manner hereinafter provided.

CIII. Any room of a house, the surface of the floor of which room is more than 3 feet below the surface of the footway of the adjoining street, and any cellar where such room or cellar is or has been occupied separately as a dwelling at or before the time of the passing of this Act, may continue to be so let or occupied if it possess the following requisites; that is to say :

If there be an area not less than 3 feet wide in every part, from 6 inches below the floor of such

SHEWS THE LEAST HEIGHT PERMITTED
BY THE ACT FOR HABITABLE ROOMS
IN THE ROOF.



room or cellar to the surface or level of the ground adjoining, to the front, back, or external side thereof, and extending the full length of such side.

If such area to the extent of at least 5 feet long and 2 feet 6 inches wide be in front of the window of such room or cellar and be open or covered only with open iron gratings.

If there be in every such room or cellar an open fireplace with proper flue therefrom.

If there be a window opening of at least 9 superficial feet in area, which window opening must be fitted with a frame filled in with glazed sashes, of which at the least $4\frac{1}{2}$ superficial feet must be made to open for ventilation.

And no such room nor any cellar not so let or occupied as aforesaid at or before the time of the passing of this Act shall be so let or occupied unless it possesses the following requisites; that is to say,

Unless the same be in every part thereof at least 7 feet in height, measured from the floor to the ceiling thereof.

Unless the same be at least 1 foot of its height above the surface of the footway of the street adjoining, or nearest to the same.

Unless there be outside of and adjoining the same room or cellar and extending along the entire frontage thereof and upwards, from 6 inches below the level of the floor thereof up to the surface of the said footway, an open area of at least 3 feet wide in every part.

Unless the same be effectually drained and secured against the rise of effluvia from any sewer or drain.

Unless there be appurtenant to such room or cellar the use of a water-closet or privy and an ashpit furnished with proper doors and coverings kept and provided according to the provisions of this Act.

Unless the same have a fireplace with a proper chimney or flue.

Unless the same have an external glazed window of at least 9 superficial feet in area, clear of the frame, and made to open in such manner as is

approved by the surveyor of the Metropolitan Board of Works.

Provided always that in any area adjoining a room or cellar there may be placed steps necessary for access to such room or cellar, and over or across any such area there may be steps necessary for access to any building above the room or cellar to which such area adjoins, if the steps in such respective cases be so placed as not to be over or across any such external window :

And whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied any room or cellar contrary to this Act shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied : and every room or cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act ; and every district surveyor acting under the Act of the session holden in the seventh and eighth years of Her Majesty, chapter eighty-four, or under any Act repeating or amending the same, shall, without any fee or reward, report periodically and otherwise as the said Metropolitan Board may order, to such Board all cases in which rooms or cellars are occupied contrary to this enactment, in the district of such surveyor, and also to the respective vestries and district boards, all such cases occurring within such parts of his district as may be within their respective parishes and districts ; but nothing herein contained shall be construed to disable other persons from enforcing the enactment and taking proceedings for penalties thereunder.

CIV. For the purpose of enforcing the enactment lastly hereinbefore contained, it shall be lawful for any such district surveyor, or for any other person, having reasonable ground for believing that any room or cellar is occupied contrary to such enactment, to demand admission to inspect the same at any time between nine o'clock in the morning and six o'clock in the evening, and if admission be not granted, any justice having jurisdiction in the place where such room or cellar is situate may, on oath before him of belief that such room or cellar is occupied contrary to the said enactment, by order under his hand authorise such district surveyor or other

Power to
district sur-
veyor to
enter under-
ground
rooms and
cellars.

If admission
refused,
justice may
issue an
order.

person to enter into and inspect such room or cellar between the hours aforesaid (e).*

XXIV. Every party arch and every arch or floor over any public way, or any passage leading to premises in other occupation, shall be formed of brick, stone, or other incombustible materials: If an arch of brick or stone is used, it shall, in cases where its span does not exceed 9 feet, be of the thickness of $4\frac{1}{2}$ inches at the least, but when its span exceeds 9 feet, be of the thickness of $8\frac{1}{2}$ inches at the least: if an arch or floor of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor.

As to party
arches over
public ways.

XXV. Every arch under any public way shall be formed of brick, stone, or other incombustible materials: if an arch of brick or stone is used, it shall in cases where its span does not exceed 10 feet, be of the thickness of $8\frac{1}{2}$ inches at the least; where its span does not exceed 15 feet, it shall be of the thickness of 13 inches at least; and where its span exceeds 15 feet, it shall be of such thickness as may be approved by the district surveyor: if an arch or other construction of iron or other incombustible material is used, it shall be constructed in such manner as may be approved by the district surveyor.

As to arches
under public
ways.

The case *Power v. Wigmore* decided the fees payable for such arches. It is the only case on this section that has been carried to the superior Courts (See Law Reports, 7 C.P. p. 386, and the report of this case at page 81 of this work.)

We next come to projections of shop fronts and cornices, and I give a plate (20) which I think will enable the reader readily to understand the requirements and limitations of the Act.

XXVI. The following rules shall be observed as to projections:

Rules as to
projections.

1. Every coping, cornice, fascia, window dressing, portico, balcony, verandah, balustrade, and architectural projection or decoration whatsoever, and also the eaves or cornices to any overhanging roof, except the cornices and dressings to the

* The district surveyor has to make returns twice yearly to the Metropolitan Board of Works, in June and December.

window fronts of shops, and except the eaves and cornices to detached and semi-detached dwelling houses distant at least 15 feet from any other building, and from the ground of any adjoining owner, shall, unless the Metropolitan Board otherwise permit, be of brick, tile, stone, artificial stone, slate, cement, or other fire-proof material.

Projections beyond the line of front, as bay windows for example, consent must be obtained from the Metropolitan Board of Works.

A curious case of a terra-cotta cornice may interest my readers. I therefore give it, as reported in the *Architect* of 8th March, 1879:—

MARLBOROUGH STREET POLICE COURT.

Before Mr. NEWTON.

A summons was heard at the instance of the Metropolitan Board of Works against the Civil Service Co-operative Stores Company for having erected a cornice at 4 and 6 Oxenden Street, which was in a dangerous condition.

Mr. Walker, district surveyor, proved he received an order from the Metropolitan Board of Works to survey these premises. It consisted of a terra-cotta cornice and blocking backed up by brickwork in mortar. Considered the cornice very dangerous, and that if a wrought-iron chain band was placed on the top and iron ties inserted from it to the underside of the girders carrying the top floor, the danger would be removed.

Mr. W. S. Cross and Mr. Spencer Chadwick, surveyor, corroborated this evidence.

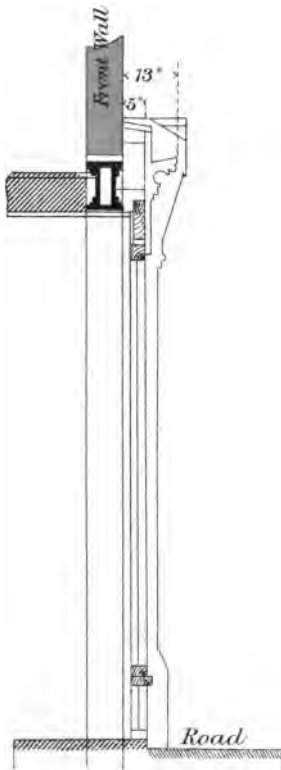
Mr. L. H. Isaacs, architect, said the overhanging portion of the cornice weighed 84 lbs. per foot, and the solid portion 560 lbs. per foot. He considered there was no necessity for ties, and the cornice as safe.

Mr. Phillips, builder of Messrs. Doulton's building, said it was amply tied down by the brickwork at the back, and admitted there were fire cracks in it.

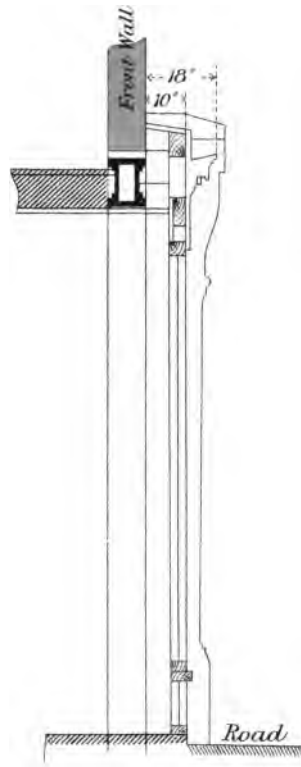
After a consultation, Mr. Walker refusing to guarantee the cost would be under 30*l.*, the case was adjourned, when it was stated that the Co-operative Society had consented to an order to secure the cornice within fourteen days; and it was referred to Mr. T. Roger Smith to say in what way it should be secured, and the work was carried out.

2. In streets or alleys of a less width than 30 feet, any shop front may project beyond the external wall

**GREATEST PROJECTIONS OF SHOP FRONTS
AND CORNICES.**



Road less than 30 ft. wide.



Road more than 30 ft. wide.

of the building to which it belongs for 5 inches and no more, and any cornice of any such shop front may project 13 inches and no more; and in any street or alley of a width greater than 30 feet, any shop front may project 10 inches and no more, and the cornice may project for 18 inches from the external walls, but no more:

3. No part of the woodwork of any shop front shall be fixed nearer than $4\frac{1}{2}$ inches from the line of junction of any adjoining premises, unless a pier or corbel of stone, brick, or other fire-proof material, $4\frac{1}{2}$ inches wide at the least, is built or fixed next to such adjoining premises as high as such woodwork is fixed, and projects an inch at the least in front of the face thereof:
4. The roof, flat, or gutter of every building, and every balcony, verandah, shop front, or other projection must be so arranged and constructed, and so supplied with gutters and pipes, as to prevent the water therefrom from dripping upon or running over any public way:
5. Except in so far as is permitted by this section in the case of shop fronts, and with the exception of water pipes and their appurtenances, copings, cornices, fascias, window dressings, and other like architectural decorations, no projection from any building shall extend beyond the general line of fronts in any street, except with the permission of the Metropolitan Board of Works hereinafter mentioned.

XXVII. The following rules shall be observed as to the separation of buildings, and limitation of their areas:—

Rules as to the separation of buildings, and limitation of their areas.

1. Every building shall be separated by external or party walls from any adjoining building.
2. Separate sets of chambers or rooms tenanted by different persons shall, if contained in a building exceeding 3600 square feet in area, be deemed to be separate buildings, and be divided accordingly, so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fire proof floors.
3. If any building in one occupation is divided into

two or more tenements, each having a separate entrance and staircase, or a separate entrance from without, every such tenement shall be deemed to be a separate building for the purposes of this Act.

This report is given in the *Builder*, March 1, 1880 :—

OPENINGS IN PARTY WALLS. FIREPROOF DIVISIONS.

Messrs. Frank Kirk and Joseph Randall were summoned before Mr. Newton at the Marlborough Street Police Court by Mr. Robert Walker, district surveyor of St. Martin-in-the-Fields, for that they, being engaged in doing certain work to and upon the premises, Nos. 27 and 28, Haymarket, did make an opening in the party wall thereof contrary to section 28 of the Metropolitan Building Act, 1855, and further, that they did omit to separate by fireproof construction the various portions of No. 27, Haymarket, which are in different occupations. Mr. Besley appeared for the defendants. The district surveyor explained to the magistrate that the object of this summons was to compel the defendants to put fireproof separations between the portions of No. 27, in the occupation of the Civil Service Stores, and the ground floor of the same premises in the occupation of Mr. Hudson, a chemist.

Mr. Besley objected that two offences had been included in one summons, and urged that that fact rendered the summons bad on the face of it; but Mr. Newton overruled the objection. Mr. Besley then, in regard to one of the points embodied in the summons—that, namely, which called on the defendants to make fireproof separations between the premises in different occupations said it was premature to take these proceedings, because the plan of reconstruction provided fully for obeying the statute in that respect. It would be seen by the agreement which he produced, the agreement by which Mr. Hudson leased to the Civil Service Stores the whole of No. 27 except the ground floor, that four of the openings which had existed in the old party wall were to be stopped up entirely in the new party wall, and that in regard to the two remaining openings, viz. one in the ground floor which had been enlarged, and one on the basement, provision was made for the erection of fireproof doors. This would not only be done in accordance with their agreement with Mr. Hudson, but also in compliance with the conditions of the Insurance Company. The fireproof doors were already on the premises, and when the building was sufficiently advanced they would be fixed.

Mr. Walker pointed out that the buildings being in two occupations, the defendants had no right to unite them. The Act said that no buildings should be united unless they were in the same occupation.

Mr. Besley, on the contrary, pointed out that by section 28, rule 3,

openings in party walls were permitted on condition that such opening shall have the floor jambs and head formed of brick, stone, or iron, and be closed by two wrought-iron doors each $\frac{1}{2}$ inch thick in the panel, &c., and that condition the plans of the building in question made provision for complying with.

Mr. Walker still contended that by rule 1 of section 23 no buildings could be united at all unless they were wholly in the same occupation.

Mr. Walker said there was great difficulty in getting over these joint occupations. He would be satisfied if the defendants would place joists with a layer of concrete over the floors sufficient in case of fire to prevent the flames spreading during the half hour or so that might elapse before the arrival of the fire-engines. He wanted that concrete over and under the ground floor occupied by Mr. Hudson.

Mr. Newton: Why will not iron doors do?

Mr. Walker: Because iron doors are to unite the buildings, and the law is that if they are not in the same occupation they are not to be united.

Mr. Verity (architect to the Civil Service Stores) contended that the Act allowed them to unite under conditions, which conditions were being observed in this building.

Mr. Walker, after further discussion, said his reason for prosecuting in this case was that, after the three great fires which had recently occurred in connection with chemical establishments, he could not take the responsibility of leaving unnoticed any neglect of the requirements of the law.

Mr. Newton: Yes, I see your point. What do you say should be done?

Mr. Walker: I would put a layer of concrete or fireproof material on the top of the ground floor and on the staircases.

Mr. Verity said this was not practicable, and Mr. Besley pointed out that it would be calling on the builders to rebuild Mr. Hudson's flooring whether Mr. Hudson liked it or not.

Another long argument ensued, and Mr. Newton said he had no alternative but to make the order asked for by Mr. Walker.

4. Every warehouse, or other building used either wholly or in part for the purposes of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet.

Probably the most important decision is the somewhat celebrated case of Messrs. Charrington, and I give the decision of the magistrate, and also, as the case went to the Appeal Court, the decision of that Court:—

On the 7th August, 1875, at Worship Street, Mr. William Scott, builder, of Antill Road, Mile End, was summoned for erecting a new building, and uniting it to an old building, the cubical contents of which then exceeded the maximum allowed by the Metropolitan Building Act (18 & 19 Vict. c. 122).

Mr. Philbrick, barrister, instructed by Messrs. Loxley and Morley, of Cheapside, appeared on behalf of Messrs. Charrington, to defend. The complainant was Mr. Legg, district surveyor of Mile End. Messrs. Charrington, it appeared, had recently had an addition made to their brewery in Brick Lane, Spitalfields, and the district surveyor claimed that the new building could not be united to the old without a party wall being run up between the two, the Act of Parliament limiting the contents of a building to 216,000 cubic feet without party walls. The Act was passed in 1855, and Messrs. Charrington's buildings were erected prior to that time. The Act was not retrospective, and the brewery, though admittedly exceeding the maximum allowed by the statute, was not interfered with. Mr. Philbrick argued that the Act did not contemplate the erection and addition of a new building which did not exceed in itself the statutory limitation, and the contents of that building alone not being in excess the summons must fail, as the Act had already legalised the old building. It was said that if a party wall was to be erected it would cause a loss of several thousands of pounds sterling to Messrs. Charrington, as it would divide their largest premises and compel them to remove a valuable erection called a "mash-tub."

Mr. Bushby gave a lengthy judgment, in which he said that the 9th section of the Act enacted that an addition to an old building should, "to the extent of such addition," be subject to the regulations of the Act. The point was whether the limitation implied by the words, "to the extent of such addition," meant that the old building was to be ignored in deciding what was necessary to render the addition conformable to the Act, or whether the limitation only meant that the old building need not be interfered with further than was necessary to make the new conformable to the Act. He thought the last was the most reasonable view, and made an order for the erection of the party wall, but was willing to grant a special case.

COURT OF APPEAL. April 30th, 1877.

(Sittings at Westminster before Lords Justices JAMES, BAGGALLAY, BRAMWELL, and BRETT.)

Scott v. Legg.

This was an appeal from the decision of the Divisional Court of Appeal.

The appellant Scott is clerk of the works to Messrs. Charrington and Head, of the Anchor Brewery, Mile End Road. The respondent Legg is the district surveyor of the district in which the brewery is situated, under the Metropolitan Building Act, 1855, which regulates construction

of new buildings in the metropolis, but does not apply to old buildings. Among other things the Act provides, by section 27, rule 4, that buildings used wholly or in part for the purpose of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls, so that each division would not contain more than that number; and it is also provided by section 28, rule 2, that no buildings shall be united if when so united they will, when considered as one building only, be in contravention of any of the provisions of the Act. There is also a provision in section 9, that in case of any alteration or addition to an old building it shall, to the extent of such alterations or additions, be subject to the regulations of the Act. The appellant was charged by the respondent with an offence under the above sections in the following circumstances:—The Anchor Brewery consists principally of an old building containing in itself more than the permitted number of cubic feet. Wishing for room for another mash-tun, Messrs. Charrington pulled down one wall of this old building and made a small addition to its size, including the addition under the same roof with the old building, and erecting no party wall. The magistrates considered the alteration to be the union of two buildings within section 28, rule 2, and ordered the appellants to erect a party wall. This order was confirmed by Baron Cleasby and Mr. Justice Grove, sitting as a Divisional Court of Appeal. From this decision the appellant again appealed.

The Court reversed the decision of the Divisional Court on the ground that, in order to effect a union between two buildings, there must be two separate buildings to unite, and that a mere addition does not fulfil that condition. They were also of opinion that section 9 did not apply, as the addition in itself did not exceed the prescribed limit of size.

XXVIII. The following rules shall be observed as to uniting buildings:—

Rules as to
uniting
buildings.

1. No buildings shall be united unless they are wholly in the same occupation.
2. No buildings shall be united, if when so united they will, considered as one building only, be in contravention of any of the provisions of this Act.
3. No opening shall be made in any party wall dividing buildings which, if taken together, would contain more than 216,000 cubic feet, except under the following conditions:

Such opening shall not exceed in width 7 feet or in height 8 feet.

Such opening shall have the floor, jambs, and head formed of brick, stone, or iron, and be closed by two wrought-iron doors, each one-fourth of an inch thick in the panel, at

a distance from each other of the full thickness of the wall, fitted to rebated frames, without woodwork of any kind.

4. Whenever any buildings which have been united cease to be in the same occupation, any openings made in the party walls dividing the same shall be stopped up with brick or stone work of the full thickness of the wall itself, and properly bonded therewith.

As to open
spaces near
dwelling
houses.

XXIX. Every building used or intended to be used as a dwelling house, unless all the rooms can be lighted and ventilated from a street or alley adjoining, shall have in the rear, or on the side thereof, an open space exclusively belonging thereto, of the extent at least of 100 square feet.

The new Act, Metropolis Management and Building Acts Amendment Act, 1882, varies this open space, increasing it as follows :—

As to open
spaces to
dwellings.

Every new building begun to be erected upon a site not previously occupied in whole or in part by a building, after the passing of this Act, intended to be used wholly or in part as a dwelling house, shall, unless the Board otherwise permit, have directly attached thereto, and in the rear thereof, an open space exclusively belonging thereto of the following extent :—

Where such building has a frontage not exceeding 15 feet, the extent of the open space shall be 150 square feet at the least.

Where such building has a frontage exceeding 15 feet, but not exceeding 20 feet, the extent of the open space shall be 200 square feet at the least.

Where such building has a frontage exceeding 20 feet, and not exceeding 30 feet, the extent of the open space shall be 300 square feet at the least; and

Where such building has a frontage exceeding 30 feet, the extent of the open space shall be 450 square feet at the least.

Every such open space shall be free from any erection thereon above the level of the ceiling of the ground floor story, and shall extend throughout the entire width (exclusive of party or external walls) of such building at the rear thereof.

The provisions of this enactment shall be in addition to and shall form part of the rules of the Metropolitan Building Act, 1855, and the said Act shall be construed accordingly.

(See section 14 of the Metropolis Management and Building Acts Amendment Act, 1882.)

XXX. Notwithstanding anything herein contained, every public building, including the walls, roofs, floors, galleries, and staircases, shall be constructed in such manner as may be approved by the district surveyor, or, in the event of disagreement, may be determined by the Metropolitan Board; and, save in so far as respects the rules of construction, every public building shall throughout this Act be deemed to be included in the term building, and be subject to all the provisions of this Act, in the same manner as if it were a building erected for a purpose other than a public purpose.

Construction
of public
buildings.

By the new Act, The Metropolis Management and Building Acts Amendment Act, 1882, the conversion of buildings is now brought under this section. The section is the 15th, and is as follows:—

Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building within the meaning of the Metropolitan Building Act, 1855, and the Acts amending the same, such conversion or alteration, and the public building thereby formed, including the walls, roofs, floors, galleries, and staircases of the same, shall be carried into effect and constructed respectively in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the Board; and the provisions of the Metropolitan Building Act, 1855, and of the Acts amending the same, with respect or applicable to the construction of public buildings, shall extend and apply to such alteration or conversion as though such alteration or conversion were the construction of a public building.

Conversion of
houses, &c.,
into public
buildings.

DISTRICT SURVEYORS.

XXXI. With the exemptions hereinbefore mentioned, every building and every work done to, in, or upon any building, shall be subject to the supervision of the

Buildings to
be supervised
by district
surveyors.

district surveyor appointed to the district in which the building is situate.

XXXII. The following things may be done by the Metropolitan Board of Works, established by the said Act for the better Local Management of the Metropolis, by order, at their discretion ; that is to say,

1. They may alter the limits of any district, or unite any two or more districts together, and in any such case place such altered district under the supervision of any existing or of any future district surveyor, with power from time to time to alter any district so made, and do all such matters and things as are necessary for carrying into effect the power hereby given :
2. They may dismiss any district surveyor, with the consent of one of Her Majesty's principal secretaries of state ; they may suspend any such surveyor as last aforesaid ; they may dismiss or suspend any future district surveyor ; and in case of any suspension, or during any vacancy, they may appoint a temporary substitute :
3. Whenever any vacancy occurs in the office of any existing or future district surveyor, they may appoint another qualified person in his place :
4. They may pay such amount of compensation as they think fit to any district surveyor who may be deprived of his office, in pursuance of the power hereby given of altering the limits of districts :

But, subject to the provisions herein contained, the several places which at the time when this Act comes into operation are constituted districts under an Act passed in the eighth year of the reign of her present Majesty, chapter eighty-four, and intituled " An Act for Regulating the Construction and Use of Buildings in the Metropolis and its Neighbourhood," for the purposes of that Act, shall continue to be districts for the purposes of this Act ; and the several persons who at the time when this Act comes into operation are district surveyors under the provisions of the said Act shall continue to be district surveyors under this Act.

XXXIII. The Institute of British Architects may from time to time cause to be examined, by such persons

Power to
Metropolitan
Board of
Works, estab-
lished under
14 & 19 Vict.
c. 126.

Examination
by Institute

and in such manner as they think fit, all candidates presenting themselves for the purpose of being examined as to their competency to perform the duties of district surveyor, and shall grant certificates of competency to the candidates found deserving of the same; and no person who has not already filled the office of district surveyor, or has not already obtained a certificate of competency in pursuance of the said Act of the eighth year of the reign of her present Majesty, chapter eighty-four, shall be qualified to be appointed to that office, unless he has received a certificate of competency from the said Institute of British Architects, or has been examined in such other manner as the said Metropolitan Board may direct, and been found competent in such examination.

XXXIV. Every district surveyor shall have and maintain an office at his own expense in such part of his district as may be approved by the Metropolitan Board of Works. District surveyor to have and maintain an office.

XXXV. If any district surveyor is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the Metropolitan Board of Works, appoint some other person as his deputy to perform all his duties for such time as he may be prevented from executing them. District surveyor may appoint deputy, with consent.

XXXVI. If at any time it appears to the Metropolitan Board of Works that, on account of the pressure of business in any district or any other account, the surveyor of that district cannot discharge his duties promptly and efficiently, then such Board may direct any other district surveyor to assist the surveyor of such district in the performance of his duties, or appoint some other person to give such assistance; and such assistant surveyor shall be entitled to receive all fees payable in respect of the services performed by him. Assistant surveyor may be appointed on emergency.

XXXVII. If any building is executed, or any work done to, in, or upon any building, by or under the superintendence of any district surveyor acting professionally or on his own private account, it shall not be lawful for such surveyor to survey any such building for the purpose of this Act, or to act as district surveyor District surveyor not to act in case of works under his professional superintendence.

in respect thereof or in any matter connected therewith, but it shall be his duty to give notice thereof to the said Metropolitan Board, who shall then appoint some other district surveyor to act in respect of such matter.

NOTICES TO DISTRICT SURVEYORS.

Notices to be given to district surveyor by builder.

XXXVIII. Two days before the following acts or event, that is to say,

Two days before any building, or any work to, in, or upon any building, is commenced, and also, if the progress of any such building or work is after the commencement thereof suspended for any period exceeding three months, two days before such building or work is resumed, and also if, during the progress of any such building or work, the builder employed thereon is changed, then two days before any new builder enters upon the continuance of such building or work, It shall be the duty of the builder engaged in building or rebuilding such building, or in executing such work, or in continuing such building or work, to give to the district surveyor notice in writing stating the situation, area, and height, and intended use of the building or buildings about to be commenced, or to, in, or upon which any work is to be done, and the number of such buildings if more than one, and also the particulars of any such proposed work, and stating also his own name and address; but any works to, in, or upon the same building that are in progress at the same time may be included in one notice.

The necessity for giving notice, and the certainty of obtaining a decision against any one neglecting to do so, are now so well known that it is not necessary to quote decisions; in fact the number of decisions is so numerous that they would occupy too much space; but I think the following cases are interesting and I therefore give them. The first is the

NEGLECT TO GIVE NOTICE OF PARTY WALL (ONE SIDE OF).

It was heard, before Mr. Vaughan, on 16th March, 1880, at Bow Street, C. F. Hayward, district surveyor, St. Giles and Bloomsbury, against Adamson and Son, builders, Putney (with solicitor), want of notice for one side of party wall.

A notice was given in October 1879, for the rebuilding of parochial school on site of houses in Little Russell Street, stating only the area to be squares, the height only stories, not giving particulars.

The district surveyor endeavoured to obtain proper notice, and sent proper forms which were never filled up, still virtually accepting the imperfect notice, which incidentally the magistrate pronounced to be an imperfect one, and not sufficiently compliant with the Act.

During the progress of the work it was found that a portion of the building which fronted also in Gibbet Street at the back of Little Russell Street (and which was not mentioned in the notice), had a wall, or portion of a wall, on the west side, which was being erected as a party wall to the adjoining building (occupied as a furniture warehouse). The outer wall of the said adjoining building having been taken down and removed, the trimmers of floors and roofs being supported on corbels built in the new wall and forming part of it, these timbers rested with their ends some inches beyond any solid work.

The district surveyor required notice for this work—as relating to the adjoining building, particularly as it was necessary for him to take notice of certain irregularities of construction, which had been invisible owing to a certain wooden screen or partition which had been put up temporarily to protect the adjoining building, and which had been taken down only the day before the 18th, and exposed the work.

The builder objected that it was not a party wall at all, and produced a plan which showed distinctly the position of the wall, and that it was not a party wall under the definition of the Act.

The question then arose as to notice being required for such wall as a party wall separate from the same wall as part of the new building, and as such held by the builder to be included in the original notice.

But the magistrate held that, taking clause 9 with clause 38, it was evident that proper notice was to be given to the district surveyor as of the adjoining building. He was ready to inflict nominal penalty, but as the district surveyor did not ask, only gave costs (of summons).

Points decided:—

1. Original notice not sufficient.
2. Wall was a party wall.
3. Notice must be given for it.

Another case I give, showing no notice is required from genuine sub-contractors:—

Mr. Frederick Ingle, of Robert Dennett & Co., of 5, Whitehall, appeared on the 20th February, 1880, to an adjourned summons taken out by Mr. Robert Kerr, for not giving notice, but did execute such work contrary to the Act, whereby he incurred a penalty. Mr. Robert Kerr, district surveyor, said defendants were doing the fireproof flooring at the St. James's Theatre, other works being done there by Mr. Bradwell. Evidence being given, it was proved that Mr. Bradwell employed Dennett, and Bradwell's men fixed the girders for the concrete.

Mr. Mansfield : I think when the summons was served the solicitors, when they saw it was clearly a mistake, might have communicated with Mr. Kerr on the matter, especially as there is no earthly reason for any hostility between them. That being so, I could not think of giving costs against Mr. Kerr. The summons will be dismissed.

Another case respecting this firm is reported in the *Builder*, April 3rd, 1880, as to the employment of more than one contractor.

Messrs. Dennett & Co. were summoned before Mr. Newton, at Marlborough Street, by Mr. Robert Walker, district surveyor, for not giving notice, &c., for works being done at the Co-operative Stores. Mr. Walker said the contractors for the external building had no control over the work of defendants. The question was whether separate contractors, affecting to a great degree internal party walls and weight-carrying power of buildings, are to do these works without supervision.

Evidence was given that Messrs. Kirk and Randall were the contractors for the general work, Messrs. Dennett & Co. were putting in the fireproof flooring, &c. They were working for the Stores under separate contract.

Mr. Walker admitted the works might be included in one notice if Messrs. Kirk and Randall took the responsibility, and asked the magistrate to impose a nominal penalty.

The magistrate adjourned the case for seven days, to enable the summons to be withdrawn on the understanding that Mr. Walker receives a notice from Messrs. Kirk and Randall, which shall include the works to which the present summons refers.

District surveyor to cause rules of this Act to be observed.

XXXIX. Every district surveyor shall, upon the receipt of any such notice as aforesaid, and also upon any work affected by the rules of this Act, but in respect of which no notice has been given, being observed by or made known to him, and also from time to time during the progress of any works affected by the rules and directions of this Act, as often as may be necessary for securing the due observance of such rules, survey any building or work hereby placed under their supervision, and cause all the rules of this Act to be duly observed.

Notice to be evidence of intended works.

XL. Every notice given in pursuance of this Act shall be deemed, in any question relative to any building or work, to be *prima facie* evidence as against such builder of the nature of the building or work proposed to be built or done.

Penalty on builders neglecting to give notice.

XLI. If any builder neglects to give notice in any of the cases aforesaid, or executes any works of which he is hereby required to give notice before giving the same,

or having given due notice of any works, executes the same before the expiration of two days from the time of giving such notice, such builder shall for every such offence incur a penalty not exceeding 20*l.*, to be recovered before a justice of the peace.

As stated in my remarks on section 38, the certainty of obtaining a conviction should induce builders not to neglect to give notice. One of the cases quoted in my remarks in that section shows that the magistrate would have inflicted the penalty had it been pressed for by the district surveyor.

XLII. At all reasonable times during the progress of any building or work affected by this Act, it shall be lawful for the district surveyor to enter and inspect such building or work; and if any person refuses to admit such surveyor to inspect such building or work, or refuses or neglects to afford such surveyor all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding 20*l.*, to be recovered before a justice of the peace.

District surveyor may enter and inspect buildings affected by this Act.

Penalty for refusal.

XLIII. The district surveyor may at all reasonable times enter any premises, with the exception of buildings hereinbefore exempted by name, for the purpose of ascertaining whether any buildings erected in such premises are in such a situation or possess such characteristics as are hereinbefore required in order to exempt them from the operation of this Act, and he may do all such things as are necessary for the above purpose; and if any person refuses to admit such surveyor to enter such premises or to inspect any such building, or neglects to afford to him all reasonable assistance in such inspection, in every such case the offender shall incur for each offence a penalty not exceeding 20*l.*, to be recovered before a justice of the peace.

District surveyor may enter buildings to ascertain as to exempted buildings.

XLIV. If by reason of any emergency any act or work is required to be done immediately, or before notice can be given as aforesaid, then it shall be lawful to do the act or work so required to be done, upon condition that, before the expiration of twenty-four hours after such act or work has been begun, notice thereof is given to the district surveyor.

In case of emergency, works may be commenced without notice.

PROCEEDINGS BY DISTRICT SURVEYORS IN CASE OF IRREGULARITY.

Notice by
district sur-
veyor in
case of ir-
regularity.

XLV. In the following cases, that is to say,

If in erecting any building, or in doing any work to, in, or upon any building, anything is done contrary to any of the rules of this Act, or anything required by this Act is omitted to be done;

In cases where due notice has not been given,—

If the district surveyor, on surveying or inspecting any building or work, finds that the same is so far advanced that he cannot ascertain whether anything has been done contrary to the rules of this Act, or whether anything required by the rules of this Act has been omitted to be done;

In every such case the district surveyor shall give to the builder engaged in erecting such building, or in doing such work, notice in writing requiring such builder, within forty-eight hours from the date of such notice, to cause anything done contrary to the rules of this Act to be amended, or to do anything required to be done by this Act, but which has been omitted to be done, or to cause so much of any building or work as prevents such district surveyor from ascertaining whether anything has been done or omitted to be done as aforesaid, to be to a sufficient extent cut into, laid open, or pulled down.

On non-
compliance
with notice,
justice to
summon
builder, and
make order
to comply
with requi-
sition.

XLVI. If the builder to whom such notice is given makes default in complying with the requisition thereof within such period of forty-eight hours, the district surveyor may cause complaint of such non-compliance to be made before a justice of the peace, and such justice shall thereupon issue a summons requiring the builder so in default to appear before him; and if upon his appearance, or in his absence, upon due proof of the service of such summons, it appears to such justice that the requisitions made by such notice or any of them are authorised by this Act, he shall make an order on such builder commanding him to comply with the requisitions of such notice or any of such requisitions that may in his opinion be authorised by this Act, within a time to be named in such order.

Penalty on
non-com-
pliance with
order of
justice.

XLVII. If such order is not complied with, the builder on whom it is made shall incur a penalty not exceeding 20*l.* a day, to be recovered before a justice of

the peace, during every day of the continuance of such non-compliance; and in addition thereto the district surveyor may, if he thinks fit, proceed with a sufficient number of workmen to enter upon the premises, and do all such things as may be necessary for enforcing the requisitions of such notice, and for bringing any building or work into conformity with the rules of this Act, and all expenses incurred by him in so doing and in any such proceedings as aforesaid, may be recovered from the builder on whom such order was made, in a summary manner, before a justice of the peace, or may be recovered from the owner of the premises in the same manner in which expenses incurred by the commissioners hereinafter named in respect of dangerous buildings are hereinafter directed to be recovered from any owner; and if the owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the district surveyor shall have the same power of taking and selling the building in respect of which the order is made, and of applying the proceeds, as is thereby given to the commissioners.

XLVIII. If any workman, labourer, servant, or other person employed in or about any building, wilfully, and without the privity or consent of the person causing such work to be done, does anything in or about such building contrary to the rules of this Act, he shall for each such offence incur a penalty not exceeding 50s.

Penalty on workmen, &c., doing anything contrary to rules of Act.

We next come to the *fees payable under the Act*, and as may be imagined, nearly every conceivable objection has been raised during the many years the Act has been in force, so that it may fairly be said no new dispute is likely to arise. I give the cases that I think it necessary to quote because they often arise in one's practice.

The greatest area, including vaults, is the area on which the fees are to be paid.

A summons was heard by Mr. Bridge, at the Hammersmith Police Court, on the 19th January, 1878, which had been taken out at the instance of Mr. T. E. Knightley, district surveyor for Hammersmith, against Mr. Thomas Stanway, a builder, for refusing to pay the fees arising out of certain work done to three houses in Keith Grove, Shepherd's Bush.

The work consisted of alterations, an extra room having been built on the back additions. The account was disputed on the ground that

the district surveyor in determining his fees had included the "area" of the front vaults, defendant contending that according to section 3 of the Act he was not entitled to do so, as the vaults in question did not exceed the height of ground story.

The magistrate asked whether, as a matter of fact, this had been done; and the district surveyor replied that it had, and submitted that the Act entitled him to do so. His dimensions were compared with defendant's and found to agree.

He explained that by section 3 "area" was deemed to be the superficies of a horizontal section of such building made at the point of its greatest surface, &c., &c.; but this was for the purpose of construction and limitation of areas (as shown by subsequent sections throughout the Act), and not for district surveyor's fees for this purpose, namely fees payable to district surveyors; the Act provided a distinct schedule containing a note that area shall include the area of any attached building. This had been done, and afterwards one half the fee in the case of a new building of the same area had been charged. He produced the report of a case decided by Sir James Ingham, where a similar objection had been made, where the magistrate ruled that for the purpose of fees, according to schedule 2, the area of any attached building *whatsoever* must be included.

Mr. Bridge said this case seemed to the point; there was not the slightest doubt in his mind that the front vaults were attached buildings; as to the definition given by section 3 of the term area, that was held by the district surveyor, *and had been laid down by Sir James Ingham to be superseded by the note at the end of the second schedule. He should follow the view taken by Sir James Ingham, and decide in favour of the district surveyor.*

The next case relates to limitation of time during which the claim for fees can be enforced.

RECOVERY OF FEES—LIMITATION OF TIME.

Before MR. HANNAY at the Worship Street Police Court, on February 5th, 1879.

This summons was issued to recover the fee for surveying the erection of boiler in rear of 47, Frampton Park Road. The boiler was completed on July 15th, 1878, and the account sent out in the ordinary course on September 9th, by the post, but not in a registered letter. The account not having been paid, a copy of the account was delivered as required by section 51, on January 17th, 1879. When the summons came on for hearing, an objection was raised by the clerk of the court, viz. "that more than six months had elapsed since the first application was made for the money." *It was urged in answer that the time six months dated from the time when the account was delivered or sent as required by section 51 of the Act, and it was so ruled by the magistrate, and an order made for payment with costs.*

The next case is an important one, where the decision was that residential chambers built in flats are separate houses and separate fees payable.

The summons was taken out by the district surveyor of Westminster against Messrs. Perry & Co., and was heard at the Westminster Police Court, Mr. D'Eyncourt being the sitting magistrate. I give the case.

(Section 27, sub-section 2—separate sets of chambers in a building exceeding 3600 square feet in area, separate buildings.)

The defendants had built a block of residential chambers in Victoria Street, Westminster, the total area of which was 10,300 feet superficial, and in order to comply with the requirements of the Act, section 27, sub-section 2, the several sets of chambers had been divided so far as they adjoin vertically by party walls, and so far as they adjoin horizontally by party arches or fireproof floors.

The defendants gave notices to the district surveyor for:—

4	sets of chambers on the	basement.		
7	"	"	"	ground floor.
7	"	"	"	first floor.
7	"	"	"	second floor.
7	"	"	"	third floor.
7	"	"	"	fourth floor.
7	"	"	"	fifth floor.
<hr/>				
Total	46	sets.		

The buildings had been carried out in accordance with these notices, and had been surveyed by the district surveyor as separate buildings. These are advertised as residential chambers, and the district surveyor claimed a separate fee upon each of the sets of chambers on the several floors as separate buildings.

The defendants admitted the facts, but through their solicitor stated that they did not know that they were going to be considered as separate buildings, and objected to the notices being used against them as they were given in error, and contended that as the building had only one entrance and staircase, only one fee of 10*l.* could be charged. They further objected to the claim made by the district surveyor for the basement portion which was not built by them. The magistrate took time to consider the latter point, and then made an order for payment of the whole amount, 108*l.* 2*s.* 6*d.* and costs.

The next case relates to what are attached buildings and water-closets, and the fees payable thereon.

A builder, Mr. Read, was summoned before Mr. Bushby, magistrate, Worship Street Police Court, on May 17, 1881, by district surveyor of Bethnal Green West, for 4*l.* 5*s.* fees as follows:—No. 1, Collingwood Street, 4 squares 2 stories alterations (rebuilding washhouse and parts

of gable and back walls), 15s., and 5s. alteration (rebuilding party wall), water-closet adjoining of house, Boundary Street, 12s. 6d., being 7s. 6d. and 5s.; No. 2, Collingwood Street, alteration (rebuilding wash-house and chimneys), as No. 1, 15s. and 5s.; detached water-closet rebuilt, 15s. and 5s.; alteration (rebuilding party wall) of water-closet next last at No. 3, Collingwood Street, 12s. 6d. Abatement of 15s. was made in original account, 3l. 10s. being claimed. The owner, after correspondence and interviews, offered a cheque for 1l. 15s. which was returned. The amount was made up, as afterwards stated, by two 15s. fees and two half 5s. fees. After long hearing, adjournment to June 23rd, when arguments were reheard, solicitor appearing on both occasions for defendant.

The 15s. fees on Nos. 1 and 2 were admitted, but it was disputed that 5s. fee on each could be charged, being alterations, and the magistrate leaned to this view. It was, however, in reply argued that the washhouses were attached buildings such as referred to in definition of area, section 3, and as such were buildings, *and being entirely rebuilt from foundations to top were new buildings. Decision in favour of district surveyor.*

As regards water-closet No. 2, it was disputed that it was in yard or area of the house, and that it was attached to a wall of yard which was attached to house, and consequently was attached to house, and no separate fee was payable. The magistrate appeared to think that a water-closet, being auxiliary to a house, could not be charged for, and that it was in the area of the house. On the section referring to "area" being explained, the latter point was made clear to the magistrate; and on the other point it was argued that there might be stables, laundries, and other buildings appertaining to a house, and that consequently the line could not be drawn. The magistrate *decided in favour of district surveyor*, alluding to a hospital where there might be a large number of appertaining buildings; but he thought no charge should be made in respect to adjoining water-closets for rebuilding party walls.

Not being strong case, district surveyor did not argue this point further. Decision, 3l. and costs, being full claim except for adjoining water-closets.

In another case which followed, same day, it was disputed that there was no alteration where a wall had been rebuilt nearly as it was before, and that the rebuilding was a necessary repair, and was exempt under section 9, and the magistrate leaned to this view, and looked case of *Badger v. Desur* in favour of it; but it was argued that the fee was not claimed for an alteration or addition, but for work affecting construction of wall which was rebuilt to replace wall taken down. Decision in favour of district surveyor for 15s. fee and 5s. Like amounts were allowed for water-closet built in fresh position.

The next case shows that fees are not recoverable from a trustee in bankruptcy.

This case was decided on 5th August, 1881, at Worship Street.

Mr. Charles Lavender, of the Ferns, Wimbledon, was summoned for disobedience of an order made under the 47th section of the Building Act requiring certain alterations in the construction of certain houses, and further, for non-payment of fees due to the surveyor in respect of the same. The complainant was Mr. Meesom, district surveyor for East Hackney, North. It appeared that the premises in question were erected or begun by a builder named Parker for a merchant named Myddleton. Mr. Meesom surveyed the premises from time to time, but in consequence of irregularities and their being erected contrary to the demands of the Act, he served notices on the builder to amend them. The work not being done as required, summonses and various processes followed, fines being inflicted and penalties ordered for non-compliance. In September last an order was obtained for the requisite work to be done. After a certain lapse of time, the work not being done in the interim, the surveyor, in accordance with the Act, put the matter into the hands of a builder to see the works carried out as required by the Act. Thereby he incurred expenses amounting to 124*l.* 4*s.* 10*d.*, his own fees, travelling expenses, &c., a further sum of 29*l.* 11*s.* 6*d.*, and a sum of 5*l.* 5*s.* was charged as solicitor's costs for advising him as to his position under the Act, the total, 159*l.* 1*s.* 4*d.*, being sought to be recovered by these proceedings. The question raised by Mr. Mugliston was whether the right person had been summoned. The complainant proved that Mr. Lavender was trustee of Myddleton's estate under the bankruptcy of the latter, and it was argued that he was therefore the "owner" of the premises within the meaning of the Act.

The magistrate decided that he had no power to make an order on the trustee in bankruptcy, and thought *there had been a want of diligence on the part of the surveyor, who might earlier have sued Myddleton.*

The next case relates to fees payable for *arches under a public way*, and as it is an important decision, it is wise to give it in full.

IN THE COURT OF COMMON PLEAS.

Wigmore (Appellant) v. *Power* (Respondent).

June 1872.

2nd Sch. and Sec. 49.

Respondent had erected fifty-two arches under a public highway, forming four sides of a square in Newgate Market, and appellant as district surveyor of the southern division of the City of London, summoned him before Sir Walter Carden for 25*l.* 10*s.* They were not arches attached to houses, but were built on a vacant piece of ground ready for houses.

Each arch or vault was separated by a pier in brickwork and was open in front, and there was no internal communication or mode of access whatever from one vault to another. On the part of appellant it was contended that each arch was a separate structure, and that he was entitled to a fee of 10*s.* for each. On the part of respondent it was

argued that the words in the schedule, "for inspecting the arches or stone floors over or under public ways, 10s.," meant that appellant was entitled to one sum of 10s. only, for inspecting any number of arches under or over any public way, and that no greater fee could be demanded. The magistrate was of opinion that the contention of the respondent was correct, and that the surveyor was only entitled to the sum of 10s.

Mr. Justice Willes: The point of law is this:—It may be represented by the question whether, if a number of arches are made under a public highway surrounding a square, whatever be the number of arches which are made, provided these arches are in one continuous public way, the surveyor is to be satisfied for the inspection of them all with a fee of 10s. only, under the second schedule of the Building Act, Part I.—whether the Act gives only one fee for any number of arches, provided those arches are all under a continuous highway, whether in a straight line or not? Supposing a man gave notice to the surveyor that he was going to construct one arch over or under a public highway, and the surveyor inspected it, and sent in his bill for 10s., and proceeded before the magistrate, what would be the result? Would it be said that this only gives the 10s. for inspecting arches in the plural or stone floors in the plural over or under public ways, and that the surveyor was not entitled to the fee of 10s. for inspecting the public arch? Would that be the reasonable conclusion to come to? or would the reasonable conclusion be that the schedule, although in the plural, uses them in describing the genus, and that the 10s. is intended to apply to each individual coming under the genus, or more properly species? I think the latter certainly is the proper conclusion. You say to a watchmaker, "What do you charge for your silver hunting watches?" "Six guineas," That does not mean that a man is to have two watches if he pays six guineas, but that he is to pay six guineas for each watch; and so here, with respect to the arches or stone floors under or over public ways, 10s.; not inspecting any number of arches in the plural, but 10s. for each of the arches mentioned in the schedule. Therefore, under the schedule, there would be 10s. for each arch. That is said to be cut down, and I think it is, by the 49th section, not in respect of their being under one highway, not in respect of their being in one notice, although they must be included in one notice to escape with one fee under the 49th section, but in respect of their being done for one building. In order to cut down the 10s. for each arch to 10s. for a number of arches, you must show that that number of arches is in one notice and that it relates to some one building. Then you charge 10s. in respect of the arches under that building, not by reason of the schedule using the arches in the plural, but by reason of the 49th section cutting down the claim in respect of arches included in one notice in respect of works done upon one building. I think there ought to be an inquiry, which is to be one of fact, as to whether these arches should be considered as one building, or whether they should be distributed in twos or threes, or any other numbers, with respect to the buildings to which they belong. Are they buildings, or part of buildings, other

than, and beyond and besides the arches themselves? If they were a viaduct, no doubt only 10s. would have to be paid; but a viaduct would be one building; at least the magistrate might come to that conclusion. If there were arches of houses in course of construction round the square, they might properly be held to be several buildings, and they might be divided according to the number of houses which the magistrate might consider are to be attributed to the arches to be built. I think this will be the question—How much ought to be paid in respect of the number of buildings which the magistrate is satisfied those arches ought to be attributed to?

The practical result is to declare that the district surveyor is entitled to receive 10s. in respect of the arch or arches appertaining to each house or intended house.

Sometimes there is an effort to evade payment by endeavouring to conceal the name of the builder who is doing the work, and the following decision will show that the court will severely punish those who endeavour thus to evade the Act:—

The case was decided by Mr. Barstow in August 1875.

Noah Moss, of 6, Montague Road, Victoria Park, was summoned by Mr. John Turner, one of the district surveyors of Islington, as being the builder or workman engaged for erecting or doing certain work to a house on the west side of Alson Road, Islington.

Mr. Turner said he had found the defendant on the building at work as a carpenter, and when he asked him who was the builder he said he did not know, but he could point him out to him. The contractor should have given him two days' notice of his intention to build before the building was commenced, but that was not done. The defendant was summoned, as he could not find out the master's name. The Act provided that the master builder, or any person who executed any part of the building, might be summoned. The defendant was very civil to him, and he had reason to believe that he was only the workman, and not the builder.

The defendant said, in reply to the charge, that he was not the master builder, and was only employed on the building as a journeyman.

Mr. Barstow fined the defendant 10s. and 2s. costs, or in default ordered him to be imprisoned for ten days.

The defendant, who said he had no money, was removed in custody.

(*Builder*, January 25, 1879.)

FEES DUE FOR OUTBUILDINGS.

District Surveyor for East Hackney v. Snewin Bros.

At WORSHIP STREET POLICE COURT, before Mr. BUSHBY.

An outbuilding, 400 feet 1 inch, had been erected against the residence, 102, Clapham Common (1300 feet 4 inches), but it had no internal communication with the house.

The district surveyor, following the decisions in the cases of *Badger v. Corbett* and *District Surveyor of St. Margaret's v. Bliss*, and *Metropolitan Board of Works v. Flight*, regarded the outbuilding as an addition to the dwelling, and claimed 1*l.* 12*s.* 6*d.*, a half fee upon the area and stories of the house and outbuilding together, 1400 feet 4 inches.

The solicitor for the defendants contended that the outbuilding was a separate building, and the fee charged should have been 15*s.* as for a new building under 400 square feet in area and one story in height.

The magistrate gave his decision:—Two questions arise here: 1. Does a separate entrance make this a distinct new building instead of an addition? 2. If not, is the half fee to be reckoned on the single story and the area of the addition, or on the stories and area of the original building plus the addition? I adopt Mr. Arnold's reasoning in *District Surveyor of St. Margaret's v. Bliss*, viz. that an addition falls within the same rule as an alteration. Now if, instead of an addition, say a chimney had been altered, the half fee which is to be reckoned on stories and areas could only be reckoned so including the chimney. Order accordingly to pay 1*l.* 12*s.* 6*d.* claimed and 2*s.* costs.

A summons was disposed of by Mr. Paget at the Hammersmith Police Court, by Mr. Knightley, district surveyor, against Mr. Turpin, of 8, Moorbrook Villas, Shepherd's Bush, to recover the fee for surveying an addition to dwelling house occupied by defendant.

Defendant, it was alleged, erected a wooden addition in the shape of greenhouse and larder attached to the back of basement, which was discovered at the end of last year, and told by district surveyor to substitute 9-inch brickwork at ends and beneath sashes, which was done. District surveyor's bill sent, 1*l.* 5*s.* Defendant argued 7*s.* 6*d.* was the fee for the area of the addition he had made.

Mr. Paget adjourned the summons in order that a plan of the premises might be prepared, but admission was refused to the premises. He, however, went fully into the case, and the district surveyor further explained if area had not been increased, there would be no doubt that his view was the right one.

The Magistrate coincided with the views taken by the district surveyor, and made an order for 1*l.* 5*s.* less 7*s.* 6*d.* already paid, and costs, taking occasion to rebuke Mr. Turpin for having frustrated his wishes with regard to the plan of premises. Mr. Turpin expressed an intention to appeal, but was refused a case.

September 11th, 1877.

(*West London Observer*, January 24th, 1879.)

Before Mr. Bridge, the question being whether Mr. Knightley, the district surveyor, could recover fees which accrued in 1877. It was stated that the house was structurally finished in that year, but the

builder went away, and Mr. Knightley now came upon a subsequent owner.

Mr. Bridge said there were two modes of recovering fees, one in the county court and one in that court. In the latter the power was limited to six months from the time when the claim arose. In the case before him the claim arose in 1877, when the house was erected. Mr. Knightley said his duties did not end then, as he had to survey it for five months afterwards.

Mr. Bridge: You are entitled to the fee within one month after the roof is on.

Mr. Knightley: The Act does not say I can ask for the fee. I should not think of taking a fee the moment the roof is on.

At the request of Mr. Knightley the summons was adjourned for him to produce cases in point.

Mr. Knightley, district surveyor, attended in support of several summonses, one having been adjourned to consider question of jurisdiction.

It had reference to the occupier of 2, Westville Road, but Mr. Morgan, the owner, disputed the payment of the fee on the ground that the *six months' summary jurisdiction* of the magistrate had expired from the time when the cause of complaint arose. It appeared that the builder of the house disappeared, and Mr. Knightley could not recover his fee till it was occupied. He then made application to the occupier, who had the power to deduct the fee from his rent, and that application was made within the six months. Mr. Morgan did not appear on this occasion. Mr. Bridge, after looking over the Act and cases in point, *made an order for the payment of fees.*

FEEs OF DISTRICT SURVEYORS.

XLIX. There shall be paid to the district surveyors, in respect of the several matters specified in the first part of the second schedule hereto, the fees therein specified, or such other fees, not exceeding the amounts therein specified, as may from time to time be directed by the Metropolitan Board of Works; but one fee only shall be chargeable with respect to any such works done in, to, or upon any building as are in pursuance of the provisions hereinbefore contained included in one notice; and if in consequence of any reduction being made by the said Metropolitan Board in the amount of the said scheduled fees the income of any existing district surveyor is diminished, the Metropolitan Board shall grant to him compensation in respect of such diminution.

Payments to district surveyors in respect of matters in first part of second schedule.

I next give the schedule payable, and the only remark necessary to make is that the fee for inspection of dangerous structures has been revised by the Metropolitan Board of Works.

It will be noticed that there is a limitation of fee to 10*l.* for new buildings, and it is therefore held that there is no limitation for the fee for alterations, that although there is often very much more trouble in superintending alterations than new buildings that the limit of fees for alterations should also be 10*l.*

SECOND SCHEDULE.

FEES PAYABLE TO DISTRICT SURVEYORS.

PART I.

FEES FOR NEW BUILDINGS.

	<i>s.</i>	<i>d.</i>
For every building not exceeding four hundred square feet in area, and not more than two stories in height	30	0
For every additional story	5	0
For every additional square of one hundred feet or fraction of such square	2	6
But no fee shall exceed ten pounds.		
And for every building not exceeding four hundred square feet in area, and of one story only in height, the fees shall be ..	15	0

FEES FOR ADDITIONS OR ALTERATIONS.

For every addition or alteration made to any building after the roof thereof has been covered in, the fee shall be half of the fee charged in the case of a new building.		
For inspecting the arches or stone floors over or under public ways	10	0
For inspecting the formation of openings in party walls	10	0

PART II.

s. d.

For inspecting dangerous structures, by
 direction of the Commissioners of Police or
 Sewers 20 0

N.B.—In this schedule “area” shall include
 the area of any attached building.

L. If any special service is required to be performed by the district surveyor under the first part of this Act, for which no fee is specified in the said schedule, the Metropolitan Board of Works may order such fee to be paid for such service as they think fit; and the district surveyor shall have the same remedy for recovering such special fee as if the same were expressly named in the said schedule.

Metropolitan
 Board may
 appoint special fees for
 services not
 provided for.

LI. At the expiration of the following periods, that is to say,

Periods when
 surveyors
 entitled to
 fees.

of one month after the roof of any building surveyed by any district surveyor under this Act has been covered in,
 of fourteen days after the completion of any such work as is by this Act placed under the supervision of the district surveyor,
 of fourteen days after any special service in respect of any building has been performed,
 the district surveyor shall be entitled to receive the amount of fees due to him from the builder employed in erecting such building, or in doing such work, or in doing any matter in respect of which any special service has been performed by the surveyor, or from the owner or occupier of the building so erected or in respect of which such work has been done or service performed; and if any such builder, owner, or occupier refuses to pay the same, such fees may be recovered in a summary manner before a justice of the peace, upon its being shown to the satisfaction of such justice that a proper bill, specifying the amount of such fees, was delivered to such builder, owner, or occupier, or sent to him in a registered letter addressed to his last known residence.

RETURNS BY DISTRICT SURVEYORS.

District
surveyor
to make
monthly
returns to
Metropolitan
Board of
Works.

LII. Every district surveyor shall, within seven days after the first day of every month, make a return to the Metropolitan Board of Works, in such manner as they may appoint, of all notices and complaints received by him relative to the business of his district, and the results thereof, and of all matters brought by him before any justice of the peace, and of all the several works supervised and special services performed by him in the exercise of his office within the previous month, and of all fees charged or received in respect thereof, and specify in such return the description and locality of every building built, rebuilt, enlarged, or altered, or on which any work has been done under his supervision, with the particular nature of every work in respect of which any fee has been charged or received.

Return duly
signed to be
a certificate
that works
are agreeable
to Act.

LIII. Every such return shall be signed by such surveyor, and shall be deemed to be a certificate that all the works enumerated therein as completed have been done in all respects agreeably to this Act, according to the best of his knowledge and belief, and that they have been duly surveyed by him.

Superintend-
ing architect
to audit
accounts of
fees charged
by district
surveyors,
and to report
in case of
excess.

LIV. The officer hereinafter mentioned as the superintending architect of metropolitan buildings, or such other officer as the Metropolitan Board of Works appoint, shall from time to time examine the said monthly returns made by the district surveyors; and in case any fees therein specified appear to such officer to be unauthorised by this Act, or to exceed in amount the rates hereby made payable, or in case any such account appears to be in any respect fraudulent or untrue, he shall make his report in writing to that effect to the Metropolitan Board of Works, who shall thereupon take such steps in the matter as they deem expedient.

POWERS OF METROPOLITAN BOARD OF WORKS.

Power for
Metropolitan
Board of
Works to
modify rules.

LV. The Metropolitan Board of Works may, by order, made with the consent of Her Majesty in council, alter, in such manner as they may think fit, the rules for the regulation of the thickness of walls contained in the first schedule thereto.

LVI. Whenever any builder is desirous of erecting any iron building, or any other building to which the rules of this Act are inapplicable, he shall make an application to the Metropolitan Board of Works, stating such desire, and setting out a plan of the proposed building, with such particulars as to the construction thereof as may be required by the said Board; and the latter, if satisfied with such plan and particulars, shall signify their approval of the same, and thereupon such building may be constructed according to such plan and particulars; but it shall not be lawful for such Board to authorise any warehouse or other building used either wholly or in part for the purposes of trade or manufacture to be erected of greater dimensions than two hundred and sixteen thousand cubic feet, unless it is divided by party walls in manner hereinbefore required.

Buildings to which rules of Act are applicable.

LVII. The said Metropolitan Board may, for the purpose of regulating the proceedings of such applicants as aforesaid, from time to time issue such general rules as to the time and manner of making such applications, as to the plans to be presented, as to the expenses to be incurred, and as to any other matter or thing connected therewith, as they may think fit.

Power of Metropolitan Board to make general rules.

LVIII. The approval by the Metropolitan Board of Works of any plans or particulars, in pursuance of the foregoing provisions, shall be signified by writing under the hand of the superintending architect of metropolitan buildings, and countersigned by the chairman of such Board, or by any other officer appointed by the Board.

Approval of Board, how signified.

LIX. The said Metropolitan Board may from time to time prepare or sanction forms of the various notices required by this Act, and may from time to time make such alterations therein as they deem requisite; and they shall cause every such form to be sealed with the seal of the Board, or marked with some other distinguishing mark; and any notice made in a form sanctioned by the Board shall in all proceedings be held sufficient in law.

Board to issue forms of notices.

LX. All expenses incurred in and about the obtaining such approval of the Metropolitan Board of Works as aforesaid shall be paid by the builder to the said superintending architect, or to such other person as the

Expenses of orders to be borne by builders.

said Board may appoint, and in default of payment may be recovered in a summary manner.

District surveyor to see plans carried into execution.

LXI. A copy of any plans and particulars, approved by the Metropolitan Board of Works, shall be furnished to the surveyor within whose district the building to which such plans and particulars relate is situate, and thereupon it shall be the duty of such district surveyor to ascertain that the same is built in accordance with the said plans and particulars.

Power to Metropolitan Board to appoint superintending architect and clerks.

LXII. The Metropolitan Board of Works may, for the purpose of aiding in the execution of this Act, appoint some fit person, to be called the "superintending architect of metropolitan buildings," together with such number of clerks as they think fit; such architect and clerks shall be removable by the said Metropolitan Board, and shall perform such duties as the said Board direct; but it shall not be lawful for the superintending architect to practise as an architect, or to follow any other occupation.

Superintending architect may appoint deputy, with consent.

LXIII. If the superintending architect is prevented by illness, infirmity, or any other unavoidable circumstance from attending to the duties of his office, he may, with the consent of the Metropolitan Board of Works, appoint some other person as his deputy to perform all his duties for such time as he may be temporarily prevented from executing them.

Salaries to architect and clerks.

LXIV. There shall be paid to such superintending architect and clerks such salaries as the said Metropolitan Board may from time to time direct.

EXPENSES.

Power of Metropolitan Board to pay salaries.

LXV. The said Metropolitan Board may at any time hereafter, by order, cause such fixed salary as they may determine to be paid to any district surveyor by way of remuneration instead of fees, provided the amount of such remuneration be not less than the amount of the average of the fees for the last three years; and thereupon such surveyor shall pay all fees received by him under this Act into the hands of the said superintending architect.

LXVI. All moneys received by the superintending architect in pursuance of this Act shall be accounted

for and paid by him into the hands of the treasurer of the said Metropolitan Board, at such time and in such manner as the said Board may direct.

ing architect
to be paid to
the Metro-
politan Board.

LXVII. The said Metropolitan Board may at any time hereafter provide, either wholly or partially, for the payment of salaries to the district surveyors, or to any of them, out of the rates leviable by such Board, in pursuance of the said Act for the better local management of the metropolis, and may thereupon abolish or reduce any fees hereby made payable to the district surveyors.

Metropolitan
Board may
pay salaries
out of rates.

LXVIII. All expenses of carrying into execution this Act, not hereby otherwise provided for, shall be deemed to be expenses incurred by the said Metropolitan Board in the execution of the said Act for the better local management of the metropolis, and shall be raised and paid accordingly.

Expenses,
how borne.

PART II.

DAINGEROUS STRUCTURES.

With regard to dangerous structures, it will be useless quoting cases unless each case were illustrated with diagrams showing the exact nature of the danger; and this would occupy so many pages that it would make this book unwieldy and be of scarcely any value to my readers, as in dangerous structures it is almost impossible to find two cases exactly on "all fours," to use the legal expression, and further it is only the experienced eye that can with certainty detect when danger threatens the public or the inmates.

The question, however, of liability for expenses incurred is so well discussed in the very recent decision of the High Court of Justice, Queen's Bench Division, on the 23rd of March in the present year (1882), that I give the report of the cases from *Land*, in which the case is ably and fully reported.

Barnett v. The Metropolitan Board of Works.

In this case certain property at Whitechapel had been taken by the Metropolitan Board of Works under the Artisans' and Labourers' Dwellings Act, and at or about the time of the notice to treat, orders were made on the plaintiff under the dangerous structure clauses of the Metropolitan Building Act, and expenses were incurred in consequence. The question raised was whether the plaintiff or the Metropolitan Board of Works themselves were liable to pay the expenses.

Mr. Vaughan Williams appeared for the plaintiffs, and Mr. Biron for the Metropolitan Board of Works.

Mr. Vaughan Williams, in opening the case, said it was an appeal

from the decision of a magistrate of the Metropolitan Police District, sitting at Worship Street, ordering the plaintiff to pay certain expenses incurred under the Metropolitan Building Act. The Metropolitan Board of Works, in the exercise of their powers under the Artisans' Dwellings Act of 1875, had taken compulsorily certain houses in Castle Area, Whitechapel, and the houses in respect of which the expenses now in question were incurred by the Metropolitan Board of Works formed part of those so taken. The question here was whether the Metropolitan Board of Works were not themselves in equity the owners of those premises after provisional awards had been made fixing the price which they were to pay the appellant for them. The case for the appellant was that at the time these repairs were done, when this building was treated by the Metropolitan Board of Works as a dangerous structure, they were themselves the owners of this very place, and not the appellant, and the Metropolitan Board of Works, or the appellant could have gone to the High Court of Justice for a decree for specific performance. Under those circumstances the decree would have been made as from the 25th March, 1880, and from that time the Metropolitan Board of Works were entitled to the rents, and the appellant was entitled to interest upon the purchase-money and no more. Further, he maintained that if the plaintiff had to pay these expenses now, the Metropolitan Board of Works would have to recoup them to him. It would be found that in this case dates were of the greatest importance. On the 23rd December, 1878, the Board served notice on the appellant that it was intended to take his property under an improvement scheme. Mr. Hunter Rodwell, Q.C., was appointed arbitrator, and on the 18th March, 1880, he made a provisional award, in which he stated that the unexpired terms had been calculated from Lady-Day, 1880. The plaintiff held his houses under a lease of seven-and-a-half years unexpired from that date, and he was awarded 780*l*. The amount of that award was not appealed against, but the Metropolitan Board of Works questioned the extent of the plaintiff's interest, alleging that it only extended over 2½ years. On that ground the Metropolitan Board of Works gave notice of objection, which was heard by the arbitrator on the 16th June, and on the 22nd July he made his final award. Now, on the 18th February, 1880, the respondents caused a survey to be made of the structure, No. 24, Castle Area, by the district surveyor, who certified it to be a dangerous structure, and notice was served on plaintiff to take down the back wall and portion of the tiling, and repair part of the woodwork of the roof. On the 20th February an order was obtained from the magistrate at Worship Street for the removal of the inmates, and they were removed accordingly. The order of the 18th February not having been obeyed, further complaint was made, and an order was obtained on the 18th March for the owner to take down the wall within eight weeks. Meantime the inmates, who were Irish people, returned to the houses, and another order was made for their removal. On the 16th July, on a certificate that it was necessary for the safety of the inhabitants that the structure should

be hoarded and the wall taken down to the ground, an order was made to that effect; and as the appellant did not obey it, the respondents, on the 19th July, incurred an expense of 26*l.* 9*s.* 4*d.* for hoarding, &c. On the 12th August, they spent 14*l.* 2*s.* 1*d.* in taking down the defective brickwork and the tiling from the roof, &c. On the 10th September, they, by virtue of an order obtained on the 13th August, expended 25*l.* 15*s.* 11*d.* in pulling down the whole structure to the ground. There were sums of 9*l.* 17*s.* 6*d.* for surveyor's expenses, and 2*l.* 4*s.* 6*d.* for general repairs and special services, making a total of 78*l.* 9*s.* 4*d.*; and on the 26th February, 1881, the magistrate made an order on the appellant for the payment of that sum, and that order was now appealed against. His (Mr. Williams') contention was that the Metropolitan Board of Works, having acquired this property compulsorily under the Artisans' and Labourers' Dwellings Act—although there has been no conveyance to make them legal owners, were the equitable owners; and he further contended that the word "owner" in the Metropolitan Building Act meant equitable and not legal owner. Any rents or profits received by the appellant after the provisional award would be received by him only as trustee for the Metropolitan Board of Works. The Metropolitan Building Act defined the owner to be the person in possession or receipt of the rents and profits of the tenement, other than a tenant from year to year. In the case of *Caradwell v. Hanson* it had been decided that a building lessee for ninety-nine years, whether he had a legal or equitable title with power to let, use, and receive rents and profits, was the real owner; because, if he had not a lease, he could go to the Court of Chancery and get one. He (Mr. Williams) maintained, that, in the present case, the Metropolitan Board of Works became the equitable owners the very day the provisional award was made, the 18th March, 1880, as the Act entitled them to go into possession the moment the provisional award was made. But whether the date of the provisional or final award be taken, the appellant was exempt from all except the first payment, as all the other expenditure was after the final award.

Mr. Biron: We say the appellant is the owner until the title is accepted by the Board; and, as a matter of fact, the title has never been perfected yet, and it is in contemplation to pay the money into court in order that the parties may settle between themselves.

Mr. Williams remarked that the appellant was taking legal proceedings for the money, and it was not his fault that the conveyance was not executed years ago. There were all sorts of liabilities that might be cast upon the owner by the Metropolitan Building Act, and unless the Metropolitan Board of Works were to be the owners after the price had been fixed, the whole sum might be swallowed up because they did not choose to complete the conveyance. The Metropolitan Board of Works, having got the house for less money because it was out of repair, were not entitled to say they were not the owners, and make deductions in respect of matters for which they had already had allowances made by the arbitrator.

Mr. Justice Grove: Under the powers of the Act, the owner is to take down the building if it is in a dangerous state, but there is no power to make him rebuild it; so that, if the order had been obeyed, there would have been no house, but only land.

Mr. Williams: And that was in substance all that the Board had paid for. It was to be observed that in the case of property scheduled under the Artisans' Act, the Board must take it. It was not a case of option, as in the case of a railway company. And the true test of the time when the Board became equitable owners was to ascertain the point of time at which the arbitrator ascertained the value of the site, because he is by the Act bound in his award to have "due regard to the nature and condition of the property and the probable duration of the buildings in their then existing state, and the state of repair thereof." The price was to be fixed with reference to the state of things upon some particular day, and the award names the 25th March. Anything that happened to the property afterwards, whether loss or gain, would go to the purchaser; the property might be burned down, and the vendor could not lose by it; it might be doubled in value, and he could not gain by it.

Mr. Justice Grove: It seems a strange thing to say that because a third person fixes a price, the ownership changes.

Mr. Williams: But the arbitrator was more than a third person. He had a statutory right to value the residue of the term for which the appellant claimed, and he must fix the date as from which the rent is to be transferred; and he stated in his award, "I have taken the residue of the term in respect of which I have awarded this compensation as running from the 25th March, 1880." A *quasi* date must be fixed for the completion, otherwise it would be impossible to measure what was transferred. These houses, when the arbitrator inspected them, were in a very bad state of repair, and he was told by the statute to take that into consideration.

Mr. Justice Grove: According to your argument, I don't know that the Board might not become owners when the arbitrator put on his hat to step out to make the survey. There must be some time to transfer. A transfer of ownership is not a gradual process. If he comes to a conclusion at midnight in bed that the price should be 700*l.*, does that change the property from one to the other?

Mr. Williams: No: because he might change his mind next morning at breakfast, and if he had not made his award he might change it effectually.

Mr. Baron Huddleston: Is there no provision for setting aside the award?

Mr. Williams: It is subject to appeal to a jury on either side, but to price. The case of the price being altered after the owner-passed is of frequent occurrence where the vendor cannot give the whole. In the present case the Metropolitan Board of were trying to get an allowance twice over. If the Board were pay the 780*l.*, notwithstanding that the property had decreased

in value, that was conclusive proof that they were the equitable owners. He submitted that, in dealing with this matter, they had nothing to do with a series of orders. Each was a separate and individual order, and the question for the court in each case would be who was the owner at the time when a particular order was made, the default in performing which led to the Metropolitan Board of Works doing the work instead of the person who was ordered. The work done was wholly different to that named in the original order, and he submitted in these circumstances that the order was wrong.

Mr. Biron, in reply, argued that the ownership did not pass until the vendor had made out such a title as a public body could accept. The certificate as to the house being out of repair was on the 18th February, 1880, or some date anterior.

Mr. Baron Huddleston: Then you say that the day when the certificate of this being a dangerous structure was given was the point of time in reference to which the subsequent orders were made; that they all referred back to the date of the certificate.

Mr. Biron: Yes; there was an express finding of the magistrate as to that. In his order of the 11th February, 1881, he says, "having regard to the fact that the expenses were occasioned by neglect to comply within a reasonable time with the notice of the 18th February, 1880;" and, as to the third sum, with "a notice of the 16th July, 1880." Both these notices were before the provisional award was confirmed on the 22nd July.

Mr. Baron Huddleston: He finds that the change of property occurred on the finding of the final award.

Mr. Biron: In substance it comes to that. At all events he says it did not take place before the 22nd July. All the notices he referred to were before that date, though the expenditure of money in two instances was subsequent to that date.

Mr. Justice Grove: What struck me in Mr. Williams' argument was this: that while you are in negotiation, and while the arbitrator is fixing the price, you, who are going to be the purchasers, exercise your compulsory powers to make him pull down the back wall, take off the tiling, and repair the timbers of the roof, which would make a considerable beneficial improvement in the house, but none of which would the arbitrator include in his award.

Mr. Biron: The dangerous structure clauses were not inserted for the benefit of the Metropolitan Board of Works, but for the safety of the public. Nobody is entitled to have his premises in a condition that is dangerous.

Mr. Justice Grove: The Metropolitan Board get premises at a cheaper price because they are out of repair, and then exercise powers to compel him to repair them. Public interest ought not to over-ride a fair bargain.

Mr. Baron Huddleston: The arbitrator, looking at these premises upon the day when he made his provisional award, considered that the appellant's interest was worth 780*l.*, having regard to the state they

were in ; but if they were in a good state of repair, he might be given a good deal more. He takes off, say 80*l.*, from what would have been a fair value, for expenses. Then, after the Metropolitan Board of Works gets the benefit of that reduction, they say they will compel the appellant to make these repairs to the extent of 80*l.*, and, therefore, instead of receiving 780*l.*, he would only receive 700*l.*

Mr. Biron : The Artisans' Dwellings Act was not to over-ride the Metropolitan Building Act, or the moment any property was included in an Improvement scheme they would be unable to deal with dangerous structures included in it, and they might have them tumbling about people's ears. The duty of having buildings pulled down that were in a dangerous state was a duty of a paramount nature that would over-ride anything in the Artisans' Dwellings Act.

Mr. Justice Grove : You say that the appellant takes advantage of his own wrong in not doing what he ought to have done ?

Mr. Justice Huddleston : He ought to have shored them up within a reasonable time, and the consequence of his neglect to do so is that these orders were made, and they were all in default of the order of the 18th February. Therefore, if the property changed hands after that date, he is liable for all the expenses under those orders.

Mr. Biron : Yes ; he is responsible for all liabilities until title is shown. In the case of *Pigott v. Great Western Railway Company*, the Master of the Rolls said the interest on the amount unpaid was to date, not from the time of the award, but from the time when they could prudently have taken possession, after the exhibition of title. Therefore he maintained that the ownership changed only when the property is in the possession of the purchaser, the vendor having shown a good title, and until then the ownership remained as before, and the machinery of the Artisans' Dwellings Act was nothing more than means provided to fix the price.

Mr. Baron Huddleston : If you are right, that all these defaults must date back to the time of the original default, then whether the property changed hands at the time of the provisional award or the final award, he is liable to pay.

Mr. Biron : Certainly.

Mr. Justice Grove : You have another argument ; that if the definition of an owner is the person in receipt of the rent, nobody could be in receipt of the rent up to the 26th July, except the appellant.

Mr. Biron : No ; the Board never could exercise any act of ownership, either by turning out the people, or interfering with the letting, or raising the rents, or doing anything at all with the structure.

Mr. Justice Grove : Does the final award mention any date at which you are put in possession of the property ?

Mr. Biron : No ; the final award only fixes the price. The next thing to be done by the claimant in respect of compensation is to send an abstract of title, and, on the acceptance of title, they become entitled to a certificate for the purchase-money. There would be a tutory receipt given, which would give conveyance. These pro-

ceedings would have brought us probably to the end of September, and we say we do not obtain the property till that time.

At this stage the hearing of the case was adjourned.

MARCH 27TH.

Mr. Williams resumed his argument in reply, which was mainly to the effect that the provisional award fixed the contract as between the vendor and the Metropolitan Board of Works. Mr. Williams said the arbitrator for one of these schemes under the Artisans' and Labourers' Act has no option in the property; he must value every one property comprised in the scheme. He immediately, without any further instructions, values every one of the properties. The Board has no option whatsoever. The Act of Parliament says the moment the scheme is confirmed the Board has no option. They were bound to take every one of the properties scheduled.

Mr. Baron Huddleston: The three orders of the 18th March, the 12th, and the 10th, were all in respect of the order of the 18th March, which had not been complied with.

Mr. Biron: Yes, my lord.

Mr. Baron Huddleston: Then these three orders are made in respect of a default before making the provisional award; all these three orders were made in consequence of default of obeying the order of the 18th.

Mr. Williams dissented.

Mr. Baron Huddleston, reading from the case: The following is the section of the Building Act referred to:—

“LXXII. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof; but if it is to the effect that the same is in a dangerous state, the Commissioners shall cause the same to be shored up, or otherwise secured, and a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner or occupier of such structure, requiring him forthwith to take down, secure, or repair the same, as the case requires.”

The respondent incurred 26*l.* 9*s.* 6*d.* in respect of the hoarding, because nothing was done under the order of March.

Mr. Williams: The previous order did not require it. No notice had been given regarding it. The hoarding order was made in July for the first time.

Mr. Baron Huddleston: My impression is that it was made on March the 18th. The respondent received notice that the owner or occupier should take down the same. On the 12th July, the notice not having been obeyed, the respondents incurred the expense; and that is in consequence of the default of March 18th.

Mr. Williams: Not at all. The occupier on the 18th March has nothing to do with the hoarding. My submission is that the magistrate totally misunderstood the case. I say the statute does give a notice to hoard or it does not. If the statute contains no power to hoard, then

there cannot be any default; but I wish to point out that there is not a pretence for saying that there was any notice given to us until July. There is nothing about passengers' protection.

Mr. Justice Grove: I want you to address yourself to the question of ownership at the date of the award; argue it as to the owner under the provisional award, or under the Act of Parliament.

Mr. Williams: Taking section 13 of the Act (reads) it appears to be a mere provision for the money being paid to the party entitled.

Mr. Justice Grove: It does not say so, but no doubt it is so.

Mr. Williams: And his title to the money depends on to whom the estate belonged when the Act of Parliament was passed, not upon anything that the Board might do.

Mr. Justice Grove: You have to show that the land has changed ownership, but this section seems to treat it as if it had changed; it says, "the person so claiming is absolutely entitled."

Mr. Biron desired to call attention to the clause limiting the time within which the Board might exercise their power to three years, section 19, sub-section 3; if that time elapses, the whole thing falls through, and the owners are left as if nothing had been passed.

Mr. Williams wished to call attention to the award as showing how the Board became the owners of this property. It appeared in paragraph 8 of the case. There was a question, of course, whether the claimant's term was five years, the tail end of the lease, or twenty-seven years, as claimed for; but there was an agreement between the parties that at all events his client was entitled to the shorter term; whether the whole of the 780*l.* is another question; that was an admission by consent. It was a clause included in the award by agreement.

Mr. Justice Grove did not agree with the counsel. He might as well suggest that an order made by consent should date from the recital of the facts upon which counsel agree.

Mr. Williams said he should certainly not urge that. The plaintiff had agreed to accept 780*l.*; although the title of the claimant to the longer term is said to be in dispute, the title of the claimant to the shorter term was not in dispute. If under *Pigot's case* interest ran from the time a prudent buyer would take possession of it, applied to the twenty-seven years' term, it could not do so as to the shorter term.

Mr. Justice Grove said that was not the point. What he wanted Mr. Williams to do was to satisfy the court that the property passed before the final award, as that was the step which appeared to be wanting in his argument.

Mr. Williams: This was a case of the Metropolitan Board trying to clear the ground at the expense of the vendor. In '*Sugden on Vendors*,' p. 530, sec. 90, it says the seller under a contract cannot spend money on improvements; and therefore any orders for specific performance should not contain an account of repairs. He did not rely upon this passing by the confirming authority, but he did argue that it passed the moment that there was a complete contract, to which an ascertained

price was an essential, and he submitted that there was a complete contract the moment they had the confirming statute *plus* the fixing of the price by the arbitrator; they were dealing with a leasehold interest, and its value depended upon how many years it had to run; the arbitrator fixed the date here from March, 1880, had he fixed September it would have been seven years and not seven and a-half years to run.

Mr. Baron Huddleston: How can it be final if the award may be altered or varied; there may be a re-hearing, there is nothing conclusive until the final award is made.

Mr. Williams: The statute treats it as final, and allows the purchaser to enter into possession under 38 & 39 Vict., s. 24. Until set aside the provisional award is good; here the figure has remained unaltered.

Mr. Justice Grove: Sub-section 24 of the Act says all proceedings under the Act shall be had, and payments made, as if such entry and deposit had not been made.

Mr. Williams: Suppose the Board had paid the money into court and taken possession, and one side or other had given notice of appeal, and there had been a new assessment by a jury in substitution of the award of the arbitrator, can anybody possibly say the contract of purchase was not complete on the day of the award? That seems hardly arguable. We are trying to find out when the contract became so complete that the property passed, and I say it was the moment the provisional award was made; and I understand that the other side argue that cannot be so, because there is an appeal provided against the provisional award; but I submit as a test, supposing that the moment the provisional award is made a purchaser had paid the amount into court, the purchaser had gone into possession, and thereupon the vendor had appealed against the provisional award, and the jury assessed a different amount, and the question then arose when was this a completed contract, was it not at the moment the provisional award was made? or did it not become a complete contract, and pass the equitable ownership until after the jury had given their verdict? The equitable ownership would have been complete the moment the price was fixed by the provisional award, and the purchaser became entitled to deal with it under the statute as something purchased by him, and exercise rights of ownership over it.

Mr. Justice Grove: But that is qualified by the language of the section. The seller cannot even get his money; the Court of Chancery may order the money to be repaid.

Mr. Williams: But here the seller cannot exercise any rights of ownership afterwards. The real question to be dealt with in this case is simply the meaning of the word "owner" in the Metropolitan Building Act. The case cited the other day in the Queen's Bench reports shows that owner does not necessarily mean legal owner; it shows more than that, namely, that there cannot be two owners, within the meaning of the statute, at the same time. There it was decided that the ground landlord could not be the owner, because the builder

was owner under an equitable lease. Here it was a very strong thing to say that the appellant was the owner after the price had been fixed, because from that moment the purchaser had the power to prevent the seller again exercising any single act of ownership except by the sufferance of the purchaser. He therefore submitted that the Metropolitan Board were the owners of this property. Although the decision of the Master of the Rolls in *Pigott* and the Great Western Railway Company was inconsistent with that of Vice-Chancellor Bacon in the *Ecclesfield Local Board* case, it did not overrule it, as at that time the Master of the Rolls was a co-ordinate authority.

Mr. Justice Grove delivered the judgment of the Court. This is an appeal from a magistrate's order, by which he ordered the respondents to recover against the appellant the sum of 78*l.* 9*s.* 4*d.* and 2*s.* costs; and the main question in the case is at what time the change of ownership in this property took place, the argument of Mr. Williams for the appellant being that at the time the expenses were incurred, or, more than that, at the time the notice was given to the appellants to put the houses in repair after the local authority (or the Metropolitan Board), the respondents, having given notice to the person, the owner of certain house property, to put his premises in repair, and after his not having done so, put them into repair at their own expense, should be entitled to recover that from the owner of the property; and his argument is that at the time the notices were given and the expenses incurred by the Metropolitan Board, they, the Metropolitan Board, were the owners of the premises and not the appellant. I am not able to accede to the argument of Mr. Williams. It appears to me the ownership did not change; that the property was not transferred and vested in the Board of Works until, at all events, the date of the final award, which was on the 22nd of July, 1880, the provisional award having been made in March. I do not myself very well understand how a provisional award can effect a change in the property and be—if I can follow Mr. Williams—the same as a final award. If so, there would be no use in having two, or why one should be called provisional. But as to the substance of the matter, the transfer of the property and the amount of purchase-money, Mr. Williams regards the provisional award as the date on which the ownership becomes transferred; but these do not appear to be the true principles, and the reason why it should not be so, and also why the cases cited from Sugden will not apply to this case, are that these were cases of contract, by which contract certain rights were absolutely acquired by both parties, and in these contracts it has been held that interest should be paid on the purchase-money as if the vendor had actually parted with the property. But the whole of this is statutory, and we must look to the statutes and see the provisions there. The strongest argument of Mr. Williams was that the Artisans' Dwellings Act, by the force of its provisions, did, in effect, pass this property first of all, he said, from the time of the Confirming Act as provided for in the Artisans' Dwellings Act of 1875; but I think he abandoned that afterwards and rested his argument on the provisional award. It appears to me that the Artisans' Act, as far as I have read

it, does not, by any means, do anything of the sort. It is really the person claiming who is absolutely entitled, and is treated as such, and they are to be satisfied that he is entitled, not *was* entitled. Then our attention is called to sub-section 24 of the schedule of the Act, which is more strongly against the contention that the power given to the local authority to enter and take possession of the land is a transfer; and it is said that cannot be the case, at all events unless they exercise these powers to become absolute owners of the land; but I think the whole clause does not go to that extent; it says, when the local authority are desirous of entering into possession it shall be lawful for the local authority to do so, after the provisional award, upon depositing in the Bank of England such a sum of money as the arbitrator may certify. Now, the object of that is to enter upon the land for the purpose of improvement, although the purchase, as I read it, is not completed. The sum may be greater than the land is worth; it was mere security. But the words "notwithstanding such entry as aforesaid, all proceedings," &c., showing that the award is inchoate, "and the local authority shall pay 5 per cent. on the compensation money." That is not money paid to the vendor, but to secure the vendor. It is like money paid into court prior to an order; but here it is paid into the Bank of England, by way of security to the parties, and "to become payable after the award of the arbitrator." Therefore the money does not become payable until after the award. It speaks of the award as a past thing, and the award under which the money becomes payable as a future thing, showing that it does not become payable until after the final award. "And the money shall be allowed to be invested, &c., together with the accumulations thereof to be repaid or transferred to the local authority." How can this be a change of proprietorship—a completed bargain, as Mr. Williams contends, a matter which changes the ownership of the property, when on application to the Court of Chancery this deposit may be re-transferred to the local authority? That section alone appears to me to show it is merely a preliminary matter to enable the Local Board, when there is necessity for hurry in the matter, to deal with the land subject to their ultimately purchasing it, which, if they do not, the money shall be repaid. Then there is another section showing that this Act does not in itself vest the property by the mere passing of the Act, or confirming order; because, as Mr. Biron has pointed out, after three years the local authority lose their compulsory powers. There is nothing like a vesting of the land, at all events before the time of the final award. His lordship then referred to the notices to hoard, and their dates, and said he was of opinion that the property had not changed, and had not vested in the local authority, and therefore, that the appellant still continued the owner. There were other sections of the statute, the power of having the matter assessed by a jury, which possibly might tend to support Mr. Biron's proposition that the vesting was later than the final award; but it is enough for this contention that the change took place on the 22nd July, the date of the final order. All the notices having been given before the final award—that being the earliest period at which

the property could vest—he thought the Board were entitled to recover, not merely the 26*l.*, but the other sums expended. It may be said that this is a case of extreme hardship, but it may not be so. The hardship presented by the appellant is that the Metropolitan Board, after they have got a provisional award—indeed before that—may get premises assessed at their then existing value, and then afterwards, when sure of paying for decayed premises, get the then owner to put them into repair under their powers, and to sell them a much better house than was originally contemplated. That may be; I cannot say it was not the case here, but not necessarily so, because if the arbitrator did his duty he would take the fact into consideration that notice had been given, and that the owner was liable to do these things before his final award; he would take that into his award in assessing the value. If that were so there would be no hardship, for he would estimate the value so as to include the amount the owner would require to put them into repair. Whether he did so in this case I cannot say; in all probability he knew of this notice and liability. These arbitrators were very skilled men, and he could not therefore presume that the arbitrator did not do what he (Mr. Justice Grove) considered to be his duty; but they could only look at the law on the subject. After giving his best consideration to the matter, he thought that the magistrate was right, and that up to the time of the final award the property had not passed; therefore there was a default made by the appellant, and that the 78*l.* was properly awarded by the magistrate.

Mr. Baron Huddleston was of the same opinion. The provisional award clearly points out that it is made subject to be set aside any time before the final award is made, and the final award fixes the time of transfer, and is dated the 22nd July; therefore the magistrate was perfectly justified in ordering payment by the appellant of this sum of 78*l.* 9*s.* 4*d.*, which arose in consequence of default long prior to the 22nd July. These expenses were all in respect of a failure of the original order of 18th March. The appeal must be dismissed with costs.

An application for leave to appeal was made, but refused by the Court.

Survey to be made of dangerous structures.
8 Vict. c. 84.
s. 40.

LXIX. Whenever it is made known to the commissioners hereinafter named that any structure (including in such expression any building, wall, or other structure, and anything affixed to or projecting from any building, wall, or other structure), is in a dangerous state, such commissioners shall require a survey of such structure to be made by the district surveyor, or by some other competent surveyor; and it shall also be the duty of the district surveyor to make known to the said commissioners any information he may receive with respect to any structure being in such state as aforesaid.

The 17th section of the new Act, "The Metropolis Management and Building Acts Amendment Act, 1882," gives more power in dealing with these buildings by the authorities. The section is as follows:—

Where a building or structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property or the inhabitants of the neighbourhood, the Board may make complaint thereof to a justice of the peace, who shall thereupon issue a summons requiring the owner and occupier of such building or structure, thereafter referred to as a "neglected structure," to appear, at a time and place to be stated in the summons, to answer such complaint; and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may, if he sees good cause, order the owner or, on his default, the occupier to take down or repair or rebuild the neglected structure or any part thereof, or to fence in the ground upon which the same stands, or any part thereof, or otherwise to put the same or any part thereof into a state of repair and good condition, to the satisfaction of the Board, within a reasonable time to be fixed by the order; and may also make an order for the costs incurred 'up to the time of the hearing.

Dilapidated
and ne-
glected
buildings.

If the order is not obeyed, the Board may, with all convenient speed, enter upon the neglected structure or such ground as aforesaid and execute the order.

Where the order directs the taking down of a neglected structure or any part thereof, the Board, in executing the order, may remove the materials to a convenient place and (unless the expenses of the Board under this section in relation to such structure be paid to them within fourteen days after such removal) sell the same as they think fit.

All expenses incurred by the Board under this section in relation to a neglected structure may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto, and in case such neglected

structure or some part thereof is not taken down and such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the owner of such neglected structure, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this Act, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

Definition of
"commissioners."

LXX. In cases where any such structure is situate within the city of *London* or the liberties thereof, hereinafter included under the expression "the City of *London*," the expression "the Commissioners" shall mean "the Commissioners of Sewers of the City of *London*"; but when such structure is situated elsewhere it shall mean "the Commissioners of Police of the Metropolis," or such one of them as may be authorised by one of Her Majesty's principal Secretaries of State to act in the matter of this Act.

Surveyor on
completion
of survey to
give certificate.

LXXI. Upon the completion of his survey the surveyor employed shall certify to the said Commissioners his opinion as to the state of any such structure as aforesaid.

Proceedings
to be taken
in respect of
certificate.

LXXII. If such certificate is to the effect that such structure is not in a dangerous state, no further proceedings shall be had in respect thereof; but if it is to the effect that the same is in a dangerous state, the Commissioners shall cause the same to be shored up, or otherwise secured, and a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner or occupier of such structure, requiring him forthwith to take down, secure, or repair the same, as the case requires.

On non-
compliance
with notice
justice to
summon
owner, &c.,
and make
order to
comply with
requisition.

LXXIII. If the owner or occupier to whom notice is given as last aforesaid fails to comply, as speedily as the nature of the case permits, with the requisition of such notice, the said commissioners may make complaint thereof before a justice of the peace; and it shall be lawful for such justice to order the owner, or in his default the occupier, of any such structure to take down,

repair, or otherwise secure, to the satisfaction of the surveyor who made such survey as aforesaid, or of such other surveyor as the said commissioners may appoint, such structure or such part thereof as appears to him to be in a dangerous state, within a time to be fixed by such justice; and in case the same is not taken down, repaired, or otherwise secured within the time so limited, the said commissioners may with all convenient speed cause all or so much of such structure as is in a dangerous condition to be taken down, repaired, or otherwise secured, in such manner as may be requisite; and all expenses incurred by the said commissioners in respect of any dangerous structure by virtue of the second part of this Act shall be paid by the owner of such structure, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

To show that owner cannot dispute the amount of the expenses, I give the following decision, quoting from the *Times* of 2nd December, 1880.

Debenham v. The Metropolitan Board.

This case arose under an enactment, section 73 of the Metropolitan Building Act, under which the owner of any dangerous structure is liable to pay the expenses incurred in removing it, and a magistrate is to make an order on "the owner" for repayment of expenses so incurred. In this case the defendant was owner of a building deemed dangerous, and the Board had incurred an expense of about 55*l.* in removing it. He was summoned before the magistrates for the expense, and objected that the Board had a contract with a builder to do all their work during a certain period, and that the contract prices were higher than at the time the work was done, and also that some of the walls of the building were party walls, so that other persons would be part owners, who ought to have been summoned. The magistrates thought otherwise, but stated a case.

Mr. Leadam argued the case for the defendant, the appellant; Mr. Biron appeared for the Board, but was not called upon, for

The Court, without hearing him, upheld the magistrate's order for repayment of the money.

The appeal was, therefore, dismissed, and the magistrate's order upheld.

LXXIV. If such owner cannot be found, or if, on demand, he refuses or neglects to pay the aforesaid expenses, the said commissioners, after giving three

If owner cannot be found, commissioners may sell

structure,
giving the
surplus to
owner, &c.

months' notice of their intention to do so, by posting a printed or written notice in a conspicuous place on the structure in respect of which or of part of which they have incurred expense, or on the land whereon it stands, may sell such structure, and they shall, after deducting from the proceeds of such sale the amount of all expenses incurred by them, restore the surplus (if any) to the owner.

Payments by
or to the
commis-
sioners, how
made.

LXXXV. All payments hereby directed to be made by or to the commissioners shall in the case of payments in respect of any structure situate within the city of *London* be made by or to the Chamberlain of the City out of or to the consolidated rate made by the Commissioners of Sewers, and in the cases of payments in respect of any structure situate elsewhere within the limits of this Act, be made by or to the Receiver of Metropolitan Police, in the same manner in which payments are made by or to such Chamberlain and Receiver respectively in the ordinary course of their business; but no commissioner or other officer shall be liable in respect of any loss that may be sustained by any person in consequence of the exercise by the said commissioners of the powers hereby given them, unless such loss happens through the wilful default of such commissioner or other officer.

Surplus, how
to be applied
if no demand
made for it.

LXXXVI. In cases where any surplus is hereby made payable to the owner, if no demand for the same is made by any person entitled thereto within one year, then the same shall be paid into the Bank of *England* in the name and with the privity of the Accountant-General of the Court of Chancery, to be placed to his account there to the credit of the owner (describing him so far as the commissioners can) subject to the control of the Court, and to be paid out to the owner on his applying by petition, and proving his title thereto.

Fees to
district
surveyor.

LXXXVII. There shall be paid to the district surveyor, or to such other surveyor as aforesaid, in respect of his services under the second part of this Act, such fees, not exceeding the amounts specified in the second part of the second schedule hereto, as may from time to time be directed by the said Metropolitan Board.

Metropolitan
Board may
appoint

LXXXVIII. If any special service is required to be performed by the district surveyor, or by such other

surveyor as aforesaid, under the second part of this Act, for which no fee is specified in the said schedule, the said Metropolitan Board may order such fee to be paid for such service as they think fit.

special fees for services not provided for.

LXXIX. All fees paid to the district surveyor or to such other surveyor as aforesaid, by virtue of the second part of this Act, shall be deemed to be expenses incurred by the said commissioners in the matter of the dangerous structure in respect of which such fees are paid, and shall be recoverable by them from the owner accordingly.

Fees to be deemed part of expenses.

LXXX. In cases where a structure has been certified by a district surveyor, or such other surveyor as aforesaid, to be dangerous to its inmates, a justice of the peace may, if satisfied of the correctness of such certificate, upon the application of the said commissioners, by order under his hand, direct any inmates of such structure to be removed therefrom by a constable or other peace officer; and if they have no other abode he may require them to be received into the workhouse established for the reception of the poor of the place in which such structure is situate.

Justice of peace may cause inmates to be removed from dangerous structures.

LXXXI. Subject to the approval of one of Her Majesty's principal Secretaries of State, the said commissioners may appoint such persons at such salaries, and make such regulations, as they think fit for carrying into execution the second part of this Act; and all expenses incurred by them not hereby otherwise provided for shall, in the case of expenses incurred by the said Commissioners of Police, be deemed to be expenses incurred by them in respect of the police force of which they are commissioners, and be payable accordingly; and all expenses incurred by the said Commissioners of Sewers shall be paid out of the said consolidated rate.

Powers of commissioners to appoint officers.

PART III.

PARTY STRUCTURES.

What is a *party wall*, and a *party structure*? The following legal decision is exhaustive and recent (1880), and no doubt for many years will be the guiding case. I therefore give it as reported in the *Law Times*, vol. xlii. n.s.

February 23rd and March 11th.

(Before Mr. Justice Fry.)

Watson v. Gray (a).

Party wall—Meanings of the term—Remedy of persons whose rights in a party wall are interfered with.

Where a wall between adjoining premises of two owners is held in common by them, neither has a right to build upon the wall or to do any other act interfering with the user of the wall or the top of it by the other. If one of such co-owners has built upon the wall, the other owner may forcibly remove the building.

Cubitt v. Porter (8 B. & C. 257) followed.

“Party wall” defined.

The plaintiff and defendant were neighbours.

The plaintiff was seised in fee simple of a messuage and premises being No 9, Queen’s Terrace, Middlesborough. The defendant was seised in fee simple of a messuage and premises, being No. 7, Queen’s Terrace, which adjoined the plaintiff’s premises. Between the plaintiff’s and defendant’s back yards there was a wall.

The plaintiff’s premises were conveyed to his predecessor in title by an indenture of conveyance of the 15th September, 1855, from one Joseph Pease, who was also the predecessor in title of the defendant.

The conveyance contained the following declaration: “It is hereby agreed and declared by and between the said parties hereto, that the north and south gables and walls of the said messuage or dwelling house and hereditaments hereby conveyed shall be and remain party walls.” A similar declaration was contained in the conveyance by Pease to the defendant of the latter’s premises.

The plaintiff having in January 1879 erected a triangular wall on the wall between the plaintiff’s and defendant’s premises, which triangular wall was intended to form part of a shed to be built on the plaintiff’s land, the defendant knocked down the triangular with a hammer.

The plaintiff brought the present action for damages in respect of the trespass thereby alleged to have been committed, and for an injunction.

North, Q.C., and Everitt for the plaintiff.—Party walls are generally held in common.

Stedman v. Smith. 8 E. & B. 1.

[Fry, J.—If the wall were used in common, how can the defendant run along the top of the wall as suggested by Crompton, J., if the plaintiff built on it. The question seems to be whether the plaintiff’s acts amount to actual ouster.]

On the construction of the deed the whole of the wall is the plaintiff’s. The plaintiff has a right to cut away a portion of the wall, that is, his own portion of the wall.

Cubitt v. Porter. 8 B. & C. 257, 264.

The wall is a party wall only so far as it is necessary as a fence or division between two properties. It is not necessarily a party wall at the top.

Weston v. Arnold. L. Rep. 8 Ch. App. 1084.

A thing may be used as a party wall, though it is not a party wall.

James, Z. J. defines a party wall as "a thing which belongs to two persons as part owners, or divides two buildings one from another."

[Fry, J.—The natural presumption would be that each owner conveyed a half.] When the wall has been built by the person who was originally owner of both properties, that presumption does not arise. The wall being vested in that owner, his deed of conveyance to the plaintiff's predecessor in title must be read most strongly against the grantor. The plaintiff, therefore, gets the whole wall, subject to certain rights in the owners of the land at the other side of the wall—rights held in the wall *quā* party wall. They also cited

Sheffield Improved Industrial and Provident Society v. Jarvis.

W. N. 1871, p. 208; W. N. 1872, p. 47.

J. E. Palmer for the defendant.—No such right as that now claimed is pleaded. The plaintiffs' wall rested on ours, which was a support to their structure. If the plaintiff has any rights in the wall, he must use them so as not to interfere with the rights of other people. I say that the defendant has a right which has been interfered with, and that which he has done in consequence has been done with propriety. The question is whether what has been done is a trespass. That it is not an actionable trespass is concluded by *Wiltshire v. Sidford* (8 B. & C. 259, n.; 1 M. & Ry. 404). When it is not known under what circumstances the wall was built, the presumption is that it belongs to the two proprietors as tenants in common. (Hunt on Boundaries, 2nd ed. p. 114; Woodf. L. & S. 11th ed. p. 575.)

Bayley, J., says that if the wall is heightened further than it ought to have been, the other party may remove it. "Further" means further than is necessary in order to heighten it. He also cited

Standard Bank of Africa v. Stokes. 38 L. T. Rep. N.S. 672;

L. Rep. 9 Ch. Div. 68.

North in reply.—The declaration as to party walls gave us all rights over them which were not inconsistent with their uses by other parties as divisions between the properties.

Wheeldon v. Burrows. 41 L. T. Rep. N.S. 327; L. Rep. 12 Ch. Div. 31.

Suffield v. Brown. 9 L. T. Rep. N.S. 192, 627; 1 De G. J. & S. 185.

Pyer v. Carter. 1 H. & N. 916.

Fry, J., reserved judgment.

March 11.—Fry, J. (after describing the premises and stating the circumstances), said:—What were the rights of the plaintiff and defendant in the wall on which the triangular wall was erected? It is necessary to refer to the terms of the deed of the 15th September. That conveyance, no doubt, would include the walls of the house. But there is an express agreement as to the wall dividing the plaintiff's premises from those of the defendant. [His Lordship read the declaration in the deed.] The question then arises, what is the meaning of "party walls?" The term is rather a popular than a legal one. It appears to be used in four different senses. (1) As describing a wall erected on land belonging to the owners of adjoining lands in equal moieties as tenants in common, as the term was applied in *Wiltshire v. Sidford* (1 M. & Ry. 404), and in *Cubitt v. Porter* (8 B. & C. 257). (2) Where the wall is divided into longitudinal halves, one half standing on the land of each of two adjoining owners, as in *Platts v. Howkins* (5 Taunt. 20). (3) As applied to a wall which belongs entirely to one of two owners of adjoining land, but which is subject to an easement of uses belonging to the other owner, as it is used in many Building Acts. (4) As applied to a wall longitudinally divided, each moiety being subject to an easement of uses by the owner of the other moiety. In the case of walls divided longitudinally, it has been held that there is a right in one owner to pare away the portion standing on his own land.

NOTE.—So if one erects a wall upon his own land and the land of his neighbour, and the neighbour pulls down the wall upon his land, and thereupon all the wall falleth down, this is lawful (*Wigford v. Gill*, Cro. Eliz. 269; *Cubitt v. Porter*, sup. 264).

In the case of a wall held in common, there is the right of partition, as mentioned in the note to *Wiltshire v. Sidford* (1 M. & Ry. p. 408). I am of opinion that the wall in this case belongs to the plaintiff and defendant as tenants in common. This seems to be the way in which party walls are commonly held, and this view is supported by the declaration in the deed which I have read. The question then is whether the erection of the triangular wall on the party was within the plaintiff's rights. It must be remembered that this question is not the same as the question whether trespass can be brought. In *Cubitt v. Porter* (sup.), Bayley, J., says, "One tenant in common has, upon that which is the subject matter of the tenancy in common, laid bricks and heightened the wall. If that be done further than it ought to have been done, what is the remedy of the other party? He may remove it. That is the only remedy he can have." That is the precise remedy to which the defendant had recourse here. In *Stedman v. Smith* (8 E. & B. 1), the plaintiff and defendant occupied adjacent plots of ground divided by a wall, of which they were tenants in common. There was a shed in the defendant's ground contiguous to the wall across its whole

width. The defendant took the coping stones off the top of the wall, heightened the wall, replaced the coping stones on the wall, and built a washhouse contiguous to the wall where the shed had stood, the roof of the washhouse occupying the whole width of the top of the wall, and he let a stone into the wall with an inscription on it stating that the wall and the land on which it stood belonged to him. The facts were held to constitute an actual ouster of the plaintiff, and an actual trespass. Crompton, J., says, "You certainly had no longer the use of the same wall; you could not put flower-pots on it, for instance. Suppose he had covered it with broken glass, so as to prevent your passing along it, as you were entitled to do." And in his judgment the same judge says:

"The plaintiff is excluded from the top of the wall; he might have wished to train fruit trees there, or to amuse himself by running along the top of the wall." Here the defendant has been prevented in a similar manner from using the wall. It is clear that his rights have been interfered with, and no damages in respect of what he has done or injunctions to restrain him from doing so in future, will be granted.

Solicitor for the plaintiff, Edmund Peacopp.
Solicitor for the plaintiff, Hope and Co.

PRELIMINARY.

LXXXII. In the construction of the following provisions relating to party structures, such one of the owners of the premises separated by or adjoining to any party structure as is desirous of executing any work in respect to such party structure shall be called the building owner, and the owner of the other premises shall be called the adjoining owner.

Definition of building owner and adjoining owner.

RIGHTS OF BUILDING AND ADJOINING OWNERS.

LXXXIII. The building owner shall have the following rights in relation to party structures; that is to say,

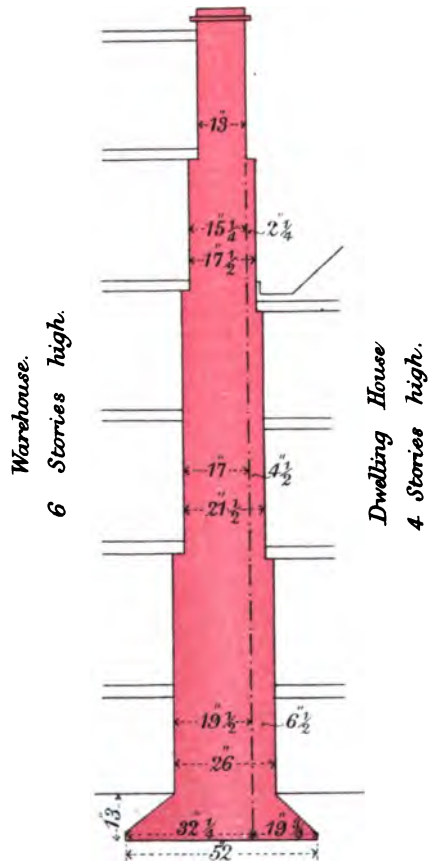
Rights of building owner.

- (1.) A right to make good or repair any party structure that is defective or out of repair:
- (2.) A right to pull down and rebuild any party structure that is so far defective or out of repair as to make it necessary or desirable to pull down the same:
- (3.) A right to pull down any timber or other partition that divides any buildings, and is not conformable with the regulations of this Act,

and to build instead a party wall conformable thereto :

- (4.) In the case of buildings having rooms or stories, the property of different owners intermixed, a right to pull down such of the said rooms or stories or any part thereof as are not built in conformity with this Act, and to rebuild the same in conformity with this Act :
- (5.) In the case of buildings connected by arches or communications over public ways or over passages belonging to other persons, a right to pull down such of the said buildings, arches, or communications, or any part thereof, as are not built in conformity with this Act, and to rebuild the same in conformity with this Act :
- (6.) A right to raise any party structure permitted by this Act to be raised, or any external wall built against such party structure, upon condition of making good all damage occasioned thereby to the adjoining premises or to the internal finishings and decorations thereof, and of carrying up to the requisite height all flues and chimney stacks belonging to the adjoining owner on or against such party structure or external wall :
- (7.) A right to pull down any party structure that is of insufficient strength for any building intended to be built, and to rebuild the same of sufficient strength for the above purpose, upon condition of making good all damage occasioned thereby to the adjoining premises, or to the internal finishings and decorations thereof :
- (8.) A right to cut into any party structure upon condition of making good all damage occasioned to the adjoining premises by such operation :
- (9.) A right to cut away any footing or any chimney breasts, jambs, or flues projecting from any party wall, in order to erect an external wall against such party wall, or for any other purpose, upon condition of making good all damage occasioned to the adjoining premises by such operation :
- (10.) A right to cut away or take down such parts of any wall or building of an adjoining owner, as

Horizontal Scale, 4 feet to 1 inch.
Vertical " 16 " " " "



may be necessary in consequence of such wall or building overhanging the ground of the building owner, in order to erect an upright wall against the same, on condition of making good any damage sustained by the wall or building by reason of such cutting away or taking down :

- (11.) A right to perform any other necessary works incident to the connexion of party structure with the premises adjoining thereto :

But the above rights shall be subject to this qualification, that any building which has been erected previously to the time of this Act coming into operation shall be deemed to be conformable with the provisions of this Act, if it is conformable with the provisions of an Act passed in the fourteenth year of his late Majesty King *George* the Third, chapter seventy-eight, or with the provisions of the said Act of the eighth year of her present Majesty, chapter eighty-four.

LXXXIV. Whenever the building owner proposes to exercise any of the foregoing rights with respect to party structures, the adjoining owner may require the building owner to build on any such party structure certain chimney jambs, breasts, or flues, or certain piers or recesses, or any other like works for the convenience of such adjoining owner ; and it shall be the duty of the building owner to comply with such requisition in all cases where the execution of the required works will not be injurious to the building owner, or cause to him unnecessary inconvenience or unnecessary delay in the exercise of his right ; and any difference that arises between any building owner and adjoining owner in respect of the execution of such works as aforesaid shall be determined in manner in which differences between building owners and adjoining owners are hereinafter directed to be determined.

LXXXV. The following rules shall be observed with respect to the exercise by building owners and adjoining owners of their respective rights :—

- (1.) No building owner shall, except with the consent of the adjoining owner, or in cases where any party structure is dangerous, in which cases the provisions hereby made as to dangerous

Rights of adjoining owner.

Rules as to exercise of rights by building and adjoining owners.

structures shall apply, exercise any right hereby given in respect of any party structure, unless he has given at the least three months previous notice to the adjoining owner by delivering the same to him personally, or by sending it by post in a registered letter addressed to such owner at his last known place of abode:

- (2.) The notice so given shall be in writing or printed, and shall state the nature of the proposed work, and the time at which such work is proposed to be commenced:
- (3.) No building owner shall exercise any right hereby given to him in such manner or at such time as to cause unnecessary inconvenience to the adjoining owner:
- (4.) Upon the receipt of such notice, the adjoining owner may require the building owner to build or may himself build on any such party structure any works to the construction of which he is hereinbefore mentioned to be entitled:
- (5.) Any requisition so made by an adjoining owner shall be in writing or printed, and shall be delivered personally to the building owner within one month after the date of the notice being given by him, or be sent by post in a registered letter addressed to him at his last known place of residence: it shall specify the works required by the adjoining owner for his convenience, and shall, if necessary, be accompanied with explanatory plans and drawings:
- (6.) If either owner does not, within fourteen days after the delivery to him of any notice or requisition, express his consent thereto, he shall be considered as having dissented therefrom; and thereupon a difference shall be deemed to have arisen between the building owner and the adjoining owner:
- (7.) In all cases not hereby specially provided for, where a difference arises between a building owner and adjoining owner in respect of any matter arising under this Act, unless both parties concur in the appointment of one sur-

veyor they shall each appoint a surveyor, and the two surveyors so appointed shall select a third surveyor, and such one surveyor, or three surveyors, or any two of them shall settle any matter in dispute between such building and adjoining owner, with power by his or their award to determine the right to do, and the time and manner of doing any work, and generally any other matter arising out of or incidental to such difference; but any time so appointed for doing any work shall not commence until after the expiration of such period of three months, as is hereinbefore mentioned :

- (8.) Any award given by such one surveyor, or by such three surveyors, or any two of them, shall be conclusive, and shall not be questioned in any court, with this exception, that either of the parties to the difference may appeal therefrom to the county court within fourteen days from the date of the delivery of any such award as aforesaid, and such county court may, subject as hereinafter mentioned, rescind or modify the award so given in such manner as it thinks just :
- (9.) If either party to the difference makes default in appointing a surveyor for ten days after notice has been given to him by the other party in manner aforesaid to make such appointment, the party giving the notice may make the appointment in the place of the party so making default :
- (10.) The costs incurred in obtaining any such award as aforesaid shall be paid by such party as such one surveyor, or three surveyors, or any two of them, may determine :
- (11.) If the appellant from any such award as aforesaid, on appearing before the county court, declares his unwillingness to have the matter decided by such court, and proves to the satisfaction of the judge of such court that in the event of the matter being decided against him he will be liable to pay a sum, exclusive of costs, exceeding fifty pounds, and gives security,

to be approved by such judge, duly to prosecute his appeal and to abide the event thereof, all proceedings in the county court shall thereupon be stayed; and it shall be lawful for such appellant to bring an action in one of her Majesty's superior courts of law at *Westminster* against the other party to the difference; and the plaintiff in such action shall deliver to the defendants an issue or issues whereby the matters in difference between them may be tried; and the form of such issue or issues, in case of dispute, or in case of the non-appearance of the defendant, shall be settled by the court in which the action is brought; and such action shall be prosecuted and issue or issues tried in the same manner and subject to the same incidents in and subject to which actions are prosecuted and issues tried in other cases within the jurisdiction of such court, or as near thereto as circumstances admit:

- (12.) If the parties to any such action agree as to the facts, a special case may be stated for the opinion of any such superior court as aforesaid, and any case so stated may be brought before the court in like manner and subject to the same incidents in and subject to which other special cases are brought before such court, or as near thereto as circumstances admit; and any costs that may have been incurred in the county court by the parties to such action as is mentioned in this section shall be deemed to be costs incurred in such action, and be payable accordingly.

Power for
building
owner to
make entry
on premises
to effect
works.

LXXXVI. Whenever any building owner has become entitled, in pursuance of this Act, to execute any work, it shall be lawful for him, his servants, agents, or workmen, at all usual times of working, to enter on any premises, for the purpose of executing and to execute such work, removing any furniture, or doing any other thing that may be necessary, and if such premises are closed he or they may, accompanied by a constable or other officer of the peace, break open any doors in order to such entry; and any owner or other person that

hinders or obstructs any workman employed for any of the purposes aforesaid, or wilfully damages or injures the said work, shall incur for every such offence a penalty not exceeding ten pounds, to be recovered before a justice of the peace. Penalty on persons obstructing.

LXXXVII. Any adjoining owner may, if he thinks fit, by notice in writing given by himself or his agent, require the building owner, before commencing any work which he may be authorised by this Act to execute, to give such security as may be agreed upon, or in case of difference may be settled by the judge of the county court, for the payment of all such costs and compensation in respect of such work as may be payable by such building owner. Security to be given by building owner, if required by adjoining owner.

LXXXVIII. The following rules shall be observed as to expenses in respect of any party structure; (that is to say.) Rules as to expenses in respect of party structure.

As to expenses to be borne jointly by the building owner and adjoining owner:

- (1.) If any party structure is defective or out of repair the expense of making good or repairing the same shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure:
- (2.) If any party structure is pulled down and rebuilt by reason of its being so far defective or out of repair as to make it necessary or desirable to pull down the same, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such structure:
- (3.) If any timber or other partition dividing any building is pulled down, in exercise of the right hereinbefore vested in a building owner, and a party structure built instead thereof, the expense of building such party structure, and also of building any additional party structures that may be required by reason of such partition having been pulled down, shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use

that each owner makes of such party structure, and to the thickness required to the respective buildings parted thereby:

- (4.) If any room or stories, or any part of rooms or stories, the property of different owners, and intermixed in any building, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such rooms or stories:
- (5.) If any arches or communications, or any parts thereof, are pulled down in pursuance of the right hereinbefore vested in any building owner, and rebuilt in conformity with this Act, the expense of such pulling down and rebuilding shall be borne by the building owner and adjoining owner in due proportion, regard being had to the use that each owner makes of such arches or communications:

As to expenses to be borne by building owner:

- (6.) If any party structure or external wall built against the same is raised in pursuance of the power hereinbefore vested in any building owner, the expense of raising the same and of making good all such damage, and of carrying up to the requisite height all such flues and chimneys as are hereinbefore required to be made good and carried up, shall be borne by the building owner:
- (7.) If any party structure which is of proper materials and sound, or not so far defective or out of repair as to make it necessary or desirable to pull down the same, is pulled down and rebuilt by the building owner, the expense of pulling down and rebuilding the same, and of making good all such damage as is hereinbefore required to be made good, shall be borne by the building owner:
- (8.) If any party structure is cut into by the building owner the expense of cutting into the same and

of making good any damage hereinbefore required to be made good, shall be borne by such building owner:

- (9.) If any footing, chimney breast, jambs, or floor is cut away in pursuance of the powers hereinbefore vested in any building owner, the expense of such cutting away, and of making good any damage hereinbefore required to be made good, shall be borne by the building owner.

LXXXIX. Within one month after the completion of any work which any building owner is by this Act authorised or required to execute, and the expense of which is in whole or in part to be borne by an adjoining owner, such building owner shall deliver to the adjoining owner an account in writing of the expense of the work, specifying any deduction to which such adjoining owner or other person may be entitled in respect of old materials, or in other respects; and every such work as aforesaid shall be estimated and valued at fair average rates and prices, according to the nature of the work and the locality, and the market price of materials and labour at the time.

Account of expenses of works to be delivered to adjoining owner within one month.

XC. At any time within one month after the delivery of such account, the adjoining owner, if dissatisfied therewith, may declare his dissatisfaction to the party delivering the same, by notice in writing given by himself or his agent, and specifying his objections thereto; and upon such notice having been given a difference shall be deemed to have arisen between the parties, and such difference shall be determined in manner hereinbefore provided for the determination of differences between building and adjoining owners.

Adjoining owner may appeal against account.

XCI. If within such period of one month as aforesaid the party receiving such account does not declare in manner aforesaid his dissatisfaction therewith, he shall be deemed to have accepted the same, and shall pay the same, on demand, to the party delivering the account, and if he fails to do so the amount so due may be recovered as a debt.

Building owner may recover if no appeal made.

XCII. Where the adjoining owner is liable to contribute to the expenses of building any party structure, until such contribution is paid the building owner at

Penalty on delay of payment by adjoining owner.

whose expense the same was built, shall stand possessed of the sole property in such structure.

As to expenses incurred on requisition of adjoining owner.

XCIII. Where any building owner has incurred any expenses on the requisition of an adjoining owner, the adjoining owner making such requisition shall be liable for all such expenses, and in default of payment the same may be recovered from him as a debt.

Penalty on building owner failing to execute required works.

XCIV. Where any building owner is, by the third part of this Act, liable to make good any damage he may occasion to the property of the adjoining owner by any works authorised to be executed by him, or to do any other thing upon condition of doing which his right to execute such works is hereby limited to arise, and such building owner fails within a reasonable time to make good such damage or to do such thing, he shall incur a penalty, to be recovered before a justice of the peace, not exceeding twenty pounds for each day during which such failure continues.

Consent, how given on behalf of persons under disability.

XCV. Where, in pursuance of this Act, any consent is required to be given, any notice to be served, or any other thing to be done by, on, or to any owner under disability, such consent may be given, such notice may be served, and such thing may be done by, on, or to the following persons, on behalf of such persons under disability; that is to say,

By, on, or to a husband, on behalf of his wife:

By, on, or to a trustee, on behalf of his cestuique trust:

By, on, or to a guardian or committee, on behalf of an infant, idiot, or lunatic.

Consent, how given on behalf of persons not to be found.

XCVI. Where any consent is required to be given or any other thing to be done by any owner in pursuance of this Act, if there is no owner capable of giving such consent or of doing such thing, and no person empowered by this Act to give such consent or to do such thing on behalf of such owner, or if any owner so capable, or any person so empowered, cannot be found, the judge of the county court shall have power to give such consent or do or cause to be done such thing on behalf of such owner, upon such terms and subject to such conditions as he may think fit, having regard alike to the nature and purpose of the subject matter in respect of which such consent is to be given, and to the

fair claims of the parties on whose behalf such consent is to be given; and such judge shall have power to dispense with the service of any notice which would otherwise be required to be served.

PART IV.

MISCELLANEOUS PROVISIONS.

XCVII. Where it is hereby declared that expenses Payment of expenses by owners are to be borne by the owner of any premises (including in the term "owner" the adjoining and building owner respectively), the following rules shall be observed with respect to the payment of such expenses:

- (1.) The owner immediately entitled in possession to such premises, or the occupier thereof, shall in the first instance pay such expenses, with this limitation, that no occupier shall be liable to pay any sum exceeding in amount the rent due or that will thereafter accrue due from him in respect of such premises during the period of his occupancy:
- (2.) If there are more owners than one, every owner shall be liable to contribute to such expenses in proportion to his interest:
- (3.) If any difference arises as to the amount of contribution, such difference shall be decided by arbitration, to be conducted in manner directed by the Companies Clauses Consolidation Act, 1845; and for that purpose the clauses of the said Act with respect to the settlement of disputes by arbitration shall be incorporated with this Act:
- (4.) If some of the owners liable to contribution cannot be found, the deficiency so arising shall be divided amongst the parties that can be found:
- (5.) Any occupier of premises who has paid any expenses under this Act may deduct the amount so paid from any rent payable by him to any owner of the same premises; and any owner of premises who has paid more

than his due proportion of any expenses may deduct the amount so overpaid from any rent that may be payable by him to any other owner of the same premises :

- (6.) If default is made by any owner or occupier in payment of any expenses hereby made payable by him in the first instance, or if default is made by any owner in payment of any other expenses or moneys due from him by way of contribution or otherwise in pursuance of this Act, then in addition to any other remedies hereby provided such expenses and moneys, if arising in respect of any matter within the provisions of the third part of this Act, may be recovered as a debt in due course of law, but if arising in respect of any other matter under this Act may be recovered in a summary manner.

Rules as to
service of
notices,
summonses,
and orders.

XCVIII. The following rules shall be observed with respect to the giving or service of any notice, summons, or order directed to be given or served under this Act in cases not hereinbefore provided for :

- (1.) A notice, summons, or order may in all cases be served personally :
- (2.) A notice, summons, or order may be served on any builder by leaving the same or sending it in a registered letter addressed to him at his place of address as stated by him to the district surveyor, or by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates :
- (3.) A notice, summons, or order may be served on the owner or occupier of any premises by leaving the same with the occupier of such premises, or with some inmate of his abode, or if there is no occupier by putting up such notice, summons, or order on a conspicuous part of the building or premises to which the same relates ; and it shall not be necessary to name the owner or occupier of such premises ; nevertheless, when the owner of any such premises and his residence, or that of his

agent, are known to the party by whom or on whose behalf any notice, summons, or order is intended to be served, it shall be the duty of such party to send every such notice, summons, or order by the post in a registered letter addressed to the residence or last known residence of such owner or of his agent :

- (4.) A notice, summons, or order may be served on any district surveyor by leaving the same at his office.

XCIX. Whenever any thing is hereby authorised to be done by a county court it may be done as follows : that is to say, if such thing arises in respect of any structure or other subject matter situate within the City of London or the liberties thereof, by the Sheriff's Court established by a local Act passed in the eleventh year of the reign of her Majesty, chapter seventy-one, intituled, " An Act for the more easy Recovery of Small Debts and Demands within the City of London or the Liberties thereof," and if such thing arises in respect of any structure or other subject matter situate elsewhere, by the county court having jurisdiction within the district in which such structure or other subject matter is situate.

As to things authorised to be done by a county court.

11 & 12 Vict. c. lxxi.

C. In cases where jurisdiction is hereby given to a county court, such court may from time to time make such order in respect of matters so brought before it as it may think fit, with power to settle the time and manner of executing any work, or of doing any other thing, and to put the parties to the case upon such terms as respects the execution of the work as it thinks fit : It shall also have power to award or refuse costs according to circumstances, and to settle the amount thereof.

Manner of determining differences.

CI. Proceedings in any county court in respect of any matter arising under this Act shall be conducted in the same manner as proceedings are conducted in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit ; and orders made by the judge of any such court may be enforced by execution, committal, or otherwise, in a similar manner to that in which the orders of such court are ordinarily enforced.

Form of proceedings in county courts.

Appeal from
decision of
county court.

CII. If either party in any case over which jurisdiction is hereby given to a county court feels aggrieved with the decision of such court in respect of any point of law or the admission or rejection of any evidence, he may appeal therefrom in the same manner and upon the same terms in and upon which he might have appealed from the decision of such court in any case within the ordinary jurisdiction of such court, or as near thereto as circumstances permit; but no such appeal shall be allowed unless the value of the matter in difference between the parties exceeds fifty pounds; and the opinion of the judge before whom the case is tried as to such value shall be conclusive.

Recovery of
penalties.

CIII. All penalties under this Act, and all fees, moneys, costs, or expenses by this Act directed to be recovered in a summary manner may be recovered in manner directed by an Act passed in the eleventh and twelfth years of the reign of her present Majesty Queen Victoria, chapter forty-three, intituled, "An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders"; and whenever any thing is hereby authorised or required to be done by or before a justice of the peace, it may be done as follows: that is to say, if such thing arises in respect of any building or wall situate within the city of London, by or before one or more justice or justices of the peace for the said city or by any metropolitan police magistrate, and if such thing arises in respect of any building or wall situate elsewhere within the limits of this Act, by or before any metropolitan police magistrate.

Application
of penalties.

CIV. Any justice of the peace in any case over which jurisdiction is hereby given to him may make such order as to the costs of any proceedings of which he has cognizance as he thinks just; he may also direct the whole or any part of any penalty imposed by him under this Act to be applied in or towards payment of the costs of the proceedings; and subject to such direction, all penalties shall be paid into the hands of the said Metropolitan Board, to be applied in such manner as the said Board thinks fit.

Provisions as
to limita-
tion of time

CV. In cases where any building has been erected or work done without due notice being given to the district

surveyor, the district surveyor may, at any time within one month after he has discovered that such building has been erected or work done, enter the premises for the purpose of seeing that the regulations of this Act have been complied with, and the time during which the district surveyor may take any proceeding, or do anything authorised or required by this Act to be done by him, in respect of such building or work, shall begin to run from the date of his discovering that such building has been erected or work done. when due notice has not been given.

CVI. In every case, except in respect of fees of a district surveyor, in which jurisdiction is hereinbefore given to a justice of the peace, if either party to any such case is dissatisfied with the determination of the justice so convicting, in respect of any point of law or of the admission or rejection of any evidence, such party may, upon giving notice within seven days to the other party of his intention to appeal, appeal therefrom to any of the superior courts of common law at Westminster; subject to this restriction, that no such appeal shall be made by any district surveyor except with the consent of the justice before whom the case is tried, and that no such appeal shall be made by any other party to the case except upon giving such security for costs, and, if the case requires it, in addition thereto such undertaking in respect of desisting in the meantime from any works complained of, or in respect of any other matter or thing arising in the case, as the justice thinks fit. Power to appeal to superior courts.

CVII. Any appeal so made shall be in the form of a special case, to be agreed on by both parties, or, if the parties cannot agree, to be settled by the justice from whose decision the appeal is made; and such case shall be transmitted by the appellant to the rule department of the master's office in the court in which the appeal is to be brought, and be heard in manner provided by the practice of such court. Form of appeal.

CVIII. No writ or process shall be sued out against any district surveyor or other person for anything done or intended to be done under the provisions of this Act until the expiration of one month next after notice in writing has been delivered to him or left at his office or usual place of abode, stating the cause of action, and the Notice of action.

name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in such last-mentioned notice; and unless such notice is proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder.

PART V.

REPEAL OF FORMER ACTS AND TEMPORARY PROVISIONS.

REPEAL.

Repeal of
7 & 8 Vict.
c. 84, except
ss. 54 to 63,
and 9 & 10
Vict. c. 5.

CIX. From and after the commencement of this Act, the following Acts, that is to say, an Act passed in the eighth year of the reign of her present Majesty, chapter eighty-four, and intituled "*An Act for regulating the construction and the use of Buildings in the Metropolis and its neighbourhood*," with the exception of the sections relating to dangerous and noxious businesses, and numbered respectively fifty-four, fifty-five, fifty-six, fifty-seven, fifty-eight, fifty-nine, sixty, sixty-one, sixty-two, and sixty-three, and an Act passed in the ninth year of the reign of her present Majesty, chapter five, and intituled "*An Act to amend an Act for regulating the construction and use of Buildings in the Metropolis and its neighbourhood*," are throughout the limits of this Act and elsewhere hereby repealed, subject to the following provisions; that is to say,

1. That such repeal shall not affect any proceedings authorised to be taken by the said Acts or either of them in respect of any act, omission, penalty, matter, or thing, and pending before the official referees or any other tribunal at the time of the commencement of this Act:

2. That in cases where any act, omission, or thing has occurred previously to the time of the commencement of this Act, in respect of which, if this Act had not passed, proceedings might have been taken under the said Acts or either of them, then proceedings in respect of such act, omission, or thing may be had under this Act in manner following; that is to say, if the matter in question is anything relating to the rights of building and adjoining owners in respect of party structures, proceedings may be had in the county court, but if the matter in question relates to the recovery of any penalty or to any other thing, proceedings may be had before any justice of the peace:
3. That so much of the Act of the fourteenth year of King *George* the Third, chapter seventy-eight, as was excepted from the operation of the said Act of the eighth year of her present Majesty, chapter eighty-four (that is to say), the sections numbered respectively seventy-four, seventy-five, seventy-six, seventy-seven, seventy-eight, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, and eighty-six, shall continue in full force.

CX. Any contract made previously to the passing of this Act for the erection of a new building shall be carried into effect in the same manner as if this Act had been passed at the time of the making thereof, and the necessary deviations from the terms of such contract may be made accordingly; and if any dispute arises in respect of any loss sustained by any party to such contract by reason of such necessary deviation, such dispute shall be determined by the county court; and whenever any costs or expenses have been paid by any owner in pursuance of this Act, then as to any structure held under any lease or agreement made previously to the commencement of this Act it shall be lawful for such owner to recover the same from the persons hitherto liable by law, or by such existing lease or contract, to maintain or repair the structure in respect of which such costs and expenses have been incurred.

As to contracts made previously to passing of Act.

Liabilities
under con-
tract between
landlord and
tenant not to
be affected.

As to iron
buildings
constructed
before this
Act comes
into opera-
tion.

Compensa-
tion to
official refe-
rees and
registrar.

Compensa-
tion to clerks
in office of
Metropolitan
Buildings.

CXI. Nothing herein contained shall vary or affect the rights or liabilities as between landlord and tenant under any contract between them.

CXII. In cases where any iron building has been constructed or is in the progress of construction previously to the time at which this Act comes into operation, and doubts are entertained whether such building is permitted by law, any person interested in such building may make an application to the commissioners of works and buildings, to signify their approval of such building; and the commissioners of works and buildings, upon being satisfied of the stability of such building, may approve of the same, and upon such approval being given, such building shall be deemed to have been constructed in manner permitted by law, and this section shall come into operation immediately after the passing of this Act.

CXIII. The official referees and registrar of metropolitan buildings may, within six months from the time at which this Act comes into operation, apply to the Commissioners of her Majesty's Treasury for compensation in respect of the loss they have sustained by reason of the abolition of their offices; and the commissioners shall take any such application into consideration, and award such compensation, either by way of a gross sum or annual payment, as they think just, having regard to the nature of the office, the time during which the applicant has held the same, and generally to the special circumstances of each case; and any compensation so given shall be paid out of moneys to be provided by Parliament; and such compensation when made by annual payment, shall be subject to this proviso, that if any such official referee or registrar is at any time thereafter appointed to any public office in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than such compensation, or if not shall be diminished by the amount of such salary.

CXIV. Any person, except the said official referees and registrar, who at the time when this Act comes into operation is employed in the office of Metropolitan Buildings, may within six months from such time apply

to the Metropolitan Board of Works for employment, and such Board shall thereupon take such application into consideration, and they shall either employ the applicant at a salary not less in amount than that which he enjoyed when in the said office of Metropolitan Buildings, or at a less salary, awarding to him compensation in respect of such diminution of salary, or they shall award to him such compensation, if any, as they, or in the event of the applicant feeling aggrieved with their decision, as the Commissioners of the Treasury, think just, having regard to the nature of the office, the time during which it has been held by the applicant, and generally to the special circumstances of the case; and any expenses incurred by the said Board in carrying into effect this section shall be deemed to be expenses incurred in the execution of the said Act for the better Local Management of the Metropolis, and be raised accordingly; nevertheless, if any such clerk or servant as aforesaid at any time thereafter is appointed to any public office, or to any office under the said Metropolitan Board in respect of which he receives a salary, the payment of the compensation awarded to him under this Act shall be suspended so long as he receives such salary, if the amount thereof is greater than the amount of such compensation, or if not shall be diminished by the amount of such salary; but, notwithstanding anything herein contained, the Metropolitan Board may, in the event of their employing any person mentioned in this section, dismiss him, with the consent of the Treasury.

I have endeavoured to put all the parts of the Act compactly together, so that at a glance everything relating, for example, to chimneys and flues, is seen. And I have noted reference to the following bye-laws. It must be thoroughly borne in mind that these bye-laws are of equal importance with the Act.

Recent as these bye-laws are, already they have been the subject of legal decisions, and I give some of the most recent. With regard to mortar I may mention that, while it was not difficult to obtain decisions preventing the use of that of bad quality, as the following decision will show, it is now very much easier.

METROPOLITAN BUILDING ACT.—Mr. Jarvis, the district surveyor of Camberwell, summoned Mr. Lister, a builder, before the magistrate at the Lambeth Police Court on Friday, for having built some houses

in Waghorn Street, Peckham, with walls not properly bonded and solidly put together with mortar or cement. Mr. Washington, solicitor, appeared for the district surveyor, and stated that this was a case where the builder persisted in using bad mortar, although repeated complaints of its inferior quality had been made. After the district surveyor had given evidence, and submitted specimens of the mortar taken from the walls, a gentleman who appeared for the builder stated that he was authorised by him to agree on his behalf to amend the work complained of. Upon this the magistrate made an order for the builder to pull down the walls within twenty-one days. Mr. Barber, of the Adelphi, surveyor, and Mr. Adamson, of Putney, builder, were in attendance ready to support the evidence given by the district surveyor as to the bad quality of the mortar.—*Metropolitan, Feb. 23rd, 1878.*

BYE-LAWS MADE BY THE BOARD UNDER THE PROVISIONS OF THE METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878, SECT. 16.

1.—FOUNDATIONS AND SITES OF BUILDINGS.

No house, building, or other erection, shall be erected upon any site or portion of any site which shall have been filled up or covered with any material impregnated or mixed with any fæcal, animal, or vegetable matter, or which shall have been filled up or covered with dust, or slop, or other refuse, or in or upon which any such matter or refuse shall have been deposited, unless and until such matter or refuse shall have been properly removed, by excavation or otherwise, from such site. Any holes caused by such excavation must, if not used for a basement or cellar, be filled in with hard brick or dry rubbish.

The site of every house or building shall be covered with a layer of good concrete, at least six inches thick, and smoothed on the upper surface, unless the site thereof be gravel, sand, or natural virgin soil.

The definition of what virgin soil is was thus given at a Special General Meeting of the members of the District Surveyors' Association, held October 31st, 1879:—

“That virgin soil means soil which is in its natural position, and has not been disturbed or cultivated.”

An important decision I next give. I quote the report from the *Builder*, February 28th, 1880:—

FOUNDATIONS: VIRGIN SOIL.

John Kember, a builder, of Gaylord Road, Starch Green, appeared before Mr. Paget at Hammersmith Police Court, to answer a summons by the district surveyor of Hammersmith for commencing to build houses without covering the site with a layer of concrete, contrary to the bye-laws made by the Metropolitan Board of Works. Mr. Knightley said the question for the magistrate to consider was, what was the meaning of virgin soil? He contended that the bye-laws contemplated virgin soil to mean soil which had not been even disturbed by a plough, and mentioned that it was contemplated to build St. Paul's Schools upon an old market garden. A quantity of animal matter had been mixed with the land, and a site like that should be covered with concrete. The land upon which defendant had erected his houses had been used for brick-making, and the clay excavated. There had since been accretions, which formed the site, and therefore the houses had not been built on virgin soil. It was necessary to have such a site sealed with concrete, to prevent the fires pumping up the unwholesome emanations into the houses. He also mentioned that the outcome of a conference of suburban builders with Mr. Cross, Home Secretary, was the list of bye-laws, and said, therefore, they were made with their consent. Mr. Kisch, who appeared for the defendant, said the land was formerly a grass field, 3 feet of which had been excavated, but it had not been filled in. His defence was that the site consisted of virgin soil. Mr. Knightley disputed that statement, and produced a specimen of the land, which had been taken from an adjoining site. He called Mr. Stephens, his clerk, who said that the excavations had been filled up with brick rubbish, &c. He was present before the floors were laid, and the ground appeared to correspond with the specimens produced. Mr. Kisch produced a sample of land which his witnesses had dug up, consisting of clay, sand, and gravel, in support of his defence that it was virgin soil. Mr. Paget, after hearing witnesses on both sides, decided that it was not virgin soil, and made an order for the site to be covered with concrete in fourteen days.

Another case was decided by the magistrate (Mr. Paget) on the 18th March, 1881.

Mr. J. Brown appeared, summoned by Mr. Knightley, district surveyor, for not covering surface of sites of six houses with 6-inch concrete.

The district surveyor called his assistant, who stated the surface at one of the back rooms had been done and approved, but the others were mere brick rubbish, and defendant ultimately fixed on floor boards.

Mr. Paget asked why, if the concreting had been done at all, the floor boards had been nailed down to prevent the district surveyor seeing it?

Order as prayed, and to be done within seven days.

From these decisions it would appear that the definition adopted by the District Surveyors' Association is the proper and legal one.

The foundations of the walls of every house or building shall be formed of a bed of good concrete, not less than nine inches thick, and projecting at least four inches on each side of the lowest course of footings of such walls. If the site be upon a natural bed of gravel, concrete will not be required.

The concrete must be composed of clean gravel, broken hard brick, properly burnt ballast, or other hard material to be approved by the district surveyor, well mixed with fresh burnt lime or cement in the proportion of one of lime to six, and one of cement to eight of the other material.

The foregoing bye-law shall not apply to any building or other erection to be used as a stable or shed, provided that such erection shall not be used for any public entertainment or assembly of persons, or as a dwelling or sleeping place.

2.—DESCRIPTION AND QUALITY OF THE SUBSTANCES OF WALLS.

The external walls of every house, building, or other erection, shall, except in the case of concrete buildings, be constructed of good, hard, sound, well-burnt bricks, or of stone, and shall be put together with good mortar or good cement.

Similar bricks shall be used in the portions of party and cross walls below the surface or level of the ground, and above the roof, including the chimney stacks. Cutters or malms may be used in arches over recesses and openings in, or facings of, external walls.

Stone used for the construction of walls must be free from vents, cracks, and sand-holes, and be laid on its natural bed.

The mortar to be used must be composed of fresh burnt lime and clean sharp sand or grit, without earthy matter, in the proportions of one of lime to three of sand or grit.

(Daily News, November 1st, 1880.)

WANDSWORTH.—*What is mortar?*—Mr. John Synnott, a builder, was summoned by Mr. Woodward, district surveyor, for using mortar composed of earthy matter in the building of houses in Rollo Street,

Battersea Park Road. The complainant said, after receiving notice of the building of the houses, he inspected the mortar and found an absence of sand. He wrote a letter to the defendant, giving him notice that the mortar must not be made with earthy matter. He examined the mortar again and found it very bad, not any alteration having been made. In cross-examination the witness said there was lime in the mortar, but it contained a large proportion of earthy matter. Mr. Hanson, the district surveyor of North Battersea, produced samples of the mortar which he had taken from the buildings. He said he had dried one sample, which he found contained one portion of lime and the remainder earthy matter and grit. Better mortar was used outside in the pointing of the walls, but the mortar used in the inside had not any sand in it. Other evidence was given to the effect that proper mortar should contain two-thirds of sand and one of lime. Mr. Haynes, who defended, said the witnesses were mistaken. He should be able to show that the mortar used contained half lime and half grit, and sharp sand—a witness for the defence said road grit was quite equal to sharp sand. Mr. Paget said it was proved by the defence that the mortar used was composed of mud. He imposed a penalty of 3*l.* with 2*l.* costs.

IMPROPER MATERIALS.

D. S. of St. Pancras, North v. Cornick.

MARYLEBONE POLICE COURT.—Mr. DE RUTZEN, Magistrate.

The Metropolis Management and Building Acts Amendment Act, 1878.

The defendant, as builder, had given notice to erect three houses in Chester Road, Kentish Town, and commenced the erection of the centre house of the three. On inspecting the works, the district surveyor, having observed that the materials being used in the composition of the mortar were bad, containing a large proportion of loam, and the bricks in the footings and lower parts of the walls soft and unsound, gave the defendant notice in each case to remove the work. The notice not being complied with, the district surveyor obtained summonses, which were heard on the 15th and 29th of December, 1880. The district surveyor stated that he had cautioned the builder not to use the materials complained of before the work was commenced, and on finding they were being used had served notice to amend the work. The mortar was compounded with material containing clay, and the bricks in the footings and lower portions of the walls were of bad quality and soft. This evidence was supported by that of Mr. F. Wallen, district surveyor.

The defendant stated that he had discontinued the use of the materials complained of in the footings and walls built since the receipt of the notice to amend, and that the work built upon those portions referred to in the notice was built of materials which the district surveyor approved.

The magistrate considered that the bye-laws had not been complied with, and imposed a penalty of 40s. and 10s. cost for each offence.

On the 29th of March, 1881, the Metropolitan Board of Works took a summons to obtain an order for the removal of the irregular work. The magistrate having heard the evidence of the district surveyor, adjourned the case seven days to see if the builder could make any arrangement as to removal of the irregular work. This not having been done, on the 5th of April the magistrate made an order that the work complained of should be amended to the satisfaction of the district surveyor within fourteen days.

The two summonses were taken in respect of one house, the party walls being treated as parts of that building.

The cement to be used must be of Portland cement, or other cement of equal quality, mixed with clean sharp sand or grit, in the proportions of one of cement to four of sand or grit.

Burnt ballast or broken brick may be substituted for sand or grit, provided such material be properly mixed with lime in a mortar mill.

Every wall of a house or building shall have a damp course throughout its whole thickness, of asphalt, or other material impervious to moisture. The damp course in external walls shall be at a height of one foot above the level of the ground directly abutting upon the external wall, and in the party or internal walls at a level of not less than six inches below that of the lowest floor.

The top of every party wall and parapet wall shall be finished with one course of hard, well-burnt bricks set on edge, in cement, or by a coping of any other water-proof and fire-resisting material, properly secured.

8.—DUTIES OF DISTRICT SURVEYORS.

It shall be the duty of each district surveyor, on receiving notice of the commencement of any house, building, or other erection, or of any alteration or addition, or on his becoming aware that any house, building, or other erection, or any alteration or addition, is being proceeded with, to see that the provisions of the foregoing bye-laws are duly observed (except in cases where the Board may have dispensed with the observance thereof), and to see that the terms and conditions upon which any dispensation may have been granted are complied with.

4.—FEES TO BE PAID TO DISTRICT SURVEYORS.

The district surveyor shall, in respect of the erection of any house or other building, be entitled to receive the sum of five shillings, the same to be taken and deemed to be a fee due to such district surveyor in respect of the duties imposed upon him by the Metropolis Management and Building Acts Amendment Act, 1878, and these bye-laws; such fee to be payable in the manner and at the time prescribed by section 51 of the Metropolitan Building Act, 1855. The district surveyor shall also, in every case where, in respect of any breach of these bye-laws or of the above Act of Parliament, an application shall be made by him to a justice, and an order made thereon, be in like manner entitled to receive the sum of ten shillings, in addition to the before-mentioned fee of five shillings.

5.—DEPOSIT OF PLANS AND SECTIONS.

On notice being given to a district surveyor of the intended erection, re-erection, alteration of, or addition to a public building, or a building to which section 56 of the Metropolitan Building Act, 1855, applies, it shall be the duty of the person giving such notice to deposit plans and sections of such erection, re-erection, alteration, or addition, with the district surveyor. Such plans and sections shall be of sufficient detail to show the construction.

On notice being given to the district surveyor of the intended erection or alteration of or addition to any house, building, or other erection, other than a public building, the district surveyor may, if he think fit so to do, by notice in writing, require the person giving such notice to produce a plan or plans and sections of any such house, building, or other erection, or of the intended alterations or additions thereto, for his inspection.

6.—PENALTIES.

In case of any breach of any of the provisions contained in these bye-laws, the offender shall be liable for each offence to a penalty not exceeding three pounds, and, in each case of a continuing offence, to a further

penalty not exceeding thirty shillings for each day after notice thereof from the Board or the district surveyor.

In any case, if the Board think it expedient, they may dispense with the observance of any of the foregoing bye-laws, or any part thereof, upon such terms and conditions as they may think proper, and in case of the non-observance of any terms and conditions upon which the Board may have dispensed with the observance of any of the foregoing bye-laws, then such proceedings may be taken and such liabilities shall be incurred as if no such dispensation had been granted.

Sealed by order,

J. E. WAKEFIELD, (L. S.)

SPRING GARDENS,
3rd October, 1879.

Clerk of the Board.

I confirm the foregoing bye-laws.

RD. ASSHETON CROSS,

One of Her Majesty's principal Secretaries of State.

WHITEHALL,
6th October, 1879.

I next give two decisions heard in March of this year (1882), supplied to me by Mr. J. Goldicutt Turner, district surveyor.

On March 30th, James Pettigrew, residing at 62, Drayton Park, was summoned before Mr. Barstow, at Clerkenwell Police Court, by J. Goldicutt Turner, the deputy district surveyor of East Islington, for having built the inside faces of the outer walls of five houses in a cul-de-sac on the east side of Drayton Park, of bricks which were not good, hard, sound and well burnt, and thus that the second bye-law made by the Metropolitan Board of Works in pursuance of the 16th section, 41 & 42 Vict. c. 32, had been infringed. Mr. Joseph E. Turner (Turner and Low, 30, King Street, Cheapside), conducted the plaintiff's case, and counsel appeared for the defendant. The plaintiff produced a specimen of the bricks of which the walls were composed, and which he said did not answer the requirements of the bye-law. Frederick Wallen, district surveyor of West St. Pancras, gave evidence to the like effect. Counsel for the defendant called William Eve, of 10, Union Court, Old Broad Street, the surveyor to the estate, who stated he considered the sample produced satisfied the requirements of the bye-law; and other witnesses also said the walls were not built with the bricks described by the plaintiff, whereupon Mr. Barstow adjourned the case for one week in order that he might inspect the walls himself.

On 6th April Mr. Barstow gave his opinion to the effect that he found the walls had been built with the bricks described by the plaintiff and his witnesses, and that they were not in conformity with the bye-law, i. e. good, hard, sound and well burnt; and he inflicted a penalty upon the defendant of 5*l.* in respect of each house, with costs.

On March 30th, Henry Stone Slegg, residing at 131, Devonshire Road, was summoned before Mr. Barstow, at Clerkenwell Police Court, by J. Goldicutt Turner, the deputy district surveyor of East Islington, for having formed the foundations of two houses in a cul-de-sac out of Drayton Park, on land to the east of the North London Railway, of concrete both insufficient in thickness and improperly composed, whereby the bye-laws made by the Metropolitan Board of Works under the 16th section of the 41 & 42 Vict. c. 32, had been infringed. J. Goldicutt Turner gave evidence to the above effect, and produced a drawing showing the relative proportions of the concrete put in and that required by the bye-laws; he also called his clerk, who corroborated his statements. After hearing contradictory evidence given by the defendant's son, and a labourer in the employ of the defendant, Mr. Barstow fined the defendant 20*l.* The same defendant had been fined, on March 3rd, 20*l.* for having commenced the above houses without having given the district surveyor the notice prescribed by the 38th section of the 18 & 19 Vict. c. 122.

LAYING OUT NEW STREETS.

The next subject which engages attention is the laying out in the metropolitan area of new streets.

An extraordinary case has recently occurred where it was contended that if open at both ends the street need not be 40 feet wide.

A decision of great importance to the owners of land in the metropolitan area has recently been given by Mr. Justice Grove and Mr. Justice Lopes. The whole case turned upon the meaning of the word "or" as it occurs in the 98th section of the Metropolitan Management Act. The defendants, Messrs. Steel Bros., contended that if they laid out a street for carriage traffic 40 feet in width, "or" made it open at both ends, they complied with the provisions of the statute; so that, for sake of argument, the street might be 10 feet wide if open at both sides, or if 40 feet in width it might have no opening at all. This conclusion, though apparently logically exact, landed the court in too palpable an absurdity; and, after some hesitation, they preferred to read *or* as *and* with the help of the context. London streets must therefore be laid out in the future, as in the past, of a minimum width of 40 feet, and open at both ends, the grammar of Parliamentary draughtsmen notwithstanding.

I give the most recent bye-laws (see page 139), and also the Metropolitan Management and Building Acts Amendment Act, 1878 (see page 141).

I think the following letter so well explains what may and what may not be done that I give it, extracting it from the *Builder* of 17th December last.

CORNER BUILDINGS AND THE LINE OF FRONT.

Section 75, Metropolitan Local Management Amendment Act, 1862, as applied to Corner Buildings.

SIR,—I have read the paragraph on this subject in the *Builder* (p. 724) with the greatest interest, and while I entirely agree with what appears to me to be the common-sense view there expressed, I have reason to remember that this reading of the Act is certainly not universally accepted.

As surveyor to the "Rolls Estate," I have frequently had much difficulty and annoyance in connection with this question; and as my experience may possibly be of interest to your readers, I venture to state a case which appears to me to be much to the point.

In 1870 I let a corner piece of ground on a building lease, this ground having a frontage in the St. James's Road (Bermondsey), and a side frontage in the Rolls Road. The side frontage of the opposite house extended to the footpath, and the general line of frontage in this road is very irregular, although the houses immediately adjoining were set back 10 feet. No question arose as to the front building line in the St. James's Road, but the Bermondsey Vestry took proceedings to compel the builder to set back the side frontage to a line, fixed by the architect of the Metropolitan Board on the application of the vestry, extending from the side frontage of the house on the opposite side of the St. James's Road (forming the angle of the Rolls Road) to the houses adjoining the plot in question in the Rolls Road, thus setting back the side frontage from 5 feet 6 in. at the St. James's Road end to 9 feet 2 inches at the back. The freeholder spared neither trouble nor expense in contesting the question before the magistrate, but the decision was given against him, and, in pursuance of the order then made, the vestry demolished so much of the house as was erected in front of the frontage line as laid down by the Metropolitan Board.

The magistrate refused to grant a case, and the rule *nisi* granted by the Court of Queen's Bench, calling upon the magistrate and the vestry to show cause why the former should not state a case, was argued, and discharged with costs against the applicant.

The house frontage was reduced from 20 feet to 14 feet 6 inches, and the freeholder was obliged to purchase the lessee's interest, as he could not allow him to be the sufferer.

A more recent case (1879) bearing upon this question is that of the *Prince Imperial* public-house, in the Rotherhithe New Road, the side frontage of which, in the Rolls Road, the Bermondsey Vestry compelled the freeholder to keep back 5 feet from the footpath.

R. J. DICKINS.

The only decision of the court I think necessary is that given by Mr. Hossack ; it is reported in the *Builder* of 25th October, 1880 :—

The District Surveyor for East Hackney (North) v. Preedy.

In this case the defendant had erected a shop at the corner of Pratt's Road and Blurton Road, and in advance of the line of fronts in Blurton Road and another shop adjoining, the ground floor of which was entered from Blurton Road and the basement from Pratt's Road, and the district surveyor contended that they were both contrary to section 26, rule 5, of the Metropolitan Building Act, 1855. The magistrate had visited the premises, and decided that the corner shop was situate in Pratt's Road, and it was not necessary that it should conform to the line of fronts in Blurton Road. The adjoining shop he considered situated in Blurton Road, and granted an order under the section named in respect of it.

BYE-LAWS AS TO THE FORMATION OF NEW
STREETS IN THE METROPOLIS, MADE UNDER
THE METROPOLIS LOCAL MANAGEMENT ACT.

Made by the Metropolitan Board of Works, at a meeting of the said Board, held at Guildhall, in the City of London, on the 17th day of March, in the year of our Lord 1857, in and for the limits of the Metropolis, as defined by an Act passed in the nineteenth year of the reign of her present Majesty, "For the better Local Management of the Metropolis," and submitted to and confirmed at a subsequent meeting of the said Board, held at Guildhall aforesaid, in and for the limits aforesaid, on the 3rd day of April, in the year of our Lord 1857; and approved by the Right Honourable Sir George Grey, baronet, one of Her Majesty's principal Secretaries of State, pursuant to the said Act; and published this 1st day of May, A.D. 1857.

In pursuance of the powers vested in the Metropolitan Board of Works, by the Act of Parliament passed in the nineteenth year of the reign of her present Majesty, intituled "An Act for the better Local Management of the Metropolis," It is hereby *ordered* by the said Board as follows, that is to say:—

1. *Four weeks at the least before any new street shall be laid out, written notice* shall be given to the Metropolitan Board of Works, at their office, Spring Gardens, in the

county of Middlesex, by the person or persons intending to lay out such new street, stating the proposed level and width thereof, and accompanied by a plan of the ground showing the local situation of the same.

2. *Forty feet* at the least shall be the width of every new street intended for carriage traffic; *twenty feet* at the least shall be the width of every new street intended only for foot traffic; provided that the said width, respectively, shall be construed to mean the width of the carriage and footway only, exclusive of any gardens, forecourts, open areas, or other spaces in front of the houses or buildings erected or intended to be erected in any street.

3. Every new street shall, unless the Metropolitan Board of Works otherwise consent in writing, have at the least two entrances of the full width of such street, and shall be open from the ground upward.

4. The measurement of the width of every new street shall be taken at a right angle to the course thereof, half on either side from the centre or crown of the roadway to the external wall or front of the intended houses or buildings on each side thereof; but where forecourts or other spaces are intended to be left in front of the houses or buildings, then the width of the street as already defined, shall be measured from the centre line up to the fence, railing, or boundary dividing or intended to divide such forecourts, gardens, or spaces from the public way.

5. The carriage way of every new street must curve or fall from the centre or crown thereof at the rate of three-eighths of an inch, at the least, for every foot of breadth.

6. In every new street the kerb to each footpath must not be less than four nor more than eight inches above the channel of the roadway, except in the case of crossings, paved or formed, for the use of foot-passengers; and the slope of every footpath towards the kerb must be half an inch to every foot of width if the footpath be unpaved, or not less than a quarter of an inch to every foot of width if the footpath be paved.

7. In this bye-law the word "*street*" shall be *interpreted* to apply to and include any highway (except the carriage-way of any turnpike road), and any road,

public bridge (not being a county bridge), lane, footway, square, court, alley, or passage, whether a thoroughfare or not; and a part of any such highway, road, bridge, lane, footway, square, court, alley, or passage.

8. In case of any breach of the regulations contained in this bye-law, the offender shall be liable for each offence to a penalty of forty shillings; and in case of a continuing offence to a further penalty of twenty shillings for each day after notice thereof from the Metropolitan Board of Works.

METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1878.

(41 & 42 Vict. c. 32.)

ARRANGEMENT OF SECTIONS.

Preliminary.

1. Short title.
2. Limits of Act.
3. Division of Act into three parts.

PART I.

4. Interpretation. "Roadway." "Centre of the roadway."
"The prescribed distance."
5. Metropolis Management Acts and this part of the Act to be construed as one Act.
6. As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways being highways.
7. As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways not being highways.
8. Proceedings in case of default in compliance with requirements of notice.
9. Streets, roads, &c., formed for foot traffic not to be used without consent of Board for carriage traffic unless widened.

10. Streets, roads, &c., formed for foot traffic before passing of Act not to be used without consent of justice for carriage traffic unless widened.
11. Power to Board in certain cases to require proprietors of theatres and certain music halls in use at the time of the passing of this Act to remedy structural defects.
12. Power to Board to make regulations with respect to new theatres and certain new music halls for protection from fire.
13. Provisional licence for new premises.

PART II.

14. Interpretation. "Foundations." "Site."
15. Metropolitan Building Acts and this part of this Act to be construed as one Act.
16. Power to Board to make bye-laws with respect to sites and foundations.
17. Provisions as to buildings, &c., not erected on foundations or areas conformable with bye-laws, &c.
18. Power to appeal.
19. Amendment of section 74 of Metropolitan Building Act, 1855, with respect to sale of dangerous structures.
20. Part II. of Act not to apply to city of London.

PART III.

21. Power for architect and persons authorised by Board, and district surveyor, to enter and inspect theatres, music halls, buildings, and works.
22. Power to owners, &c., to enter houses, &c., to comply with notices or orders.
23. Recovery of penalties.
24. Exceptions from Metropolis Management Acts extended to this Act.
25. Exceptions from Metropolitan Building Acts extended to this Act.
26. Act not to apply to the Inner and Middle Temple, &c.
27. Saving rights of the Crown and the Duchy of Lancaster.



CHAP. XXXII.

An Act to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively.

[22nd July, 1878.]

WHEREAS the provisions of the several Acts now in force within the metropolis are insufficient for duly regulating the erection and extension of houses and buildings in close proximity to certain roads, passages, and ways, and it is expedient that for such purpose further and better provisions should be made :

And whereas with a view to protect the public frequenting theatres and music halls within the metropolis from danger from fire it is expedient that provisions such as are in this Act contained should be made for empowering the Metropolitan Board of Works (in this Act referred to as "the Board") to cause alterations in existing theatres and music halls to be made in certain cases, and to make regulations with respect to the position and structure of new theatres and certain new music halls :

And whereas it is expedient to make provisions with respect to the making, filling up, and preparation of the foundations and sites of houses and buildings to be erected within the metropolis, and with respect to the quality of the substances to be used in the formation or construction of the sites, foundations, and walls of such houses and buildings with a view to the stability of the same, the prevention of fires, and for purposes of health :

And whereas it is expedient to make further and better provisions with respect to the payment of expenses incurred by the Board in relation to dangerous structures :

And whereas for the purpose aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively :

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords

18 & 19 Vict.
c. 120.

18 & 19 Vict.
c. 122.

Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

PRELIMINARY.

Short Title.	I. This Act may be cited for all purposes as the Metropolis Management and Building Acts Amendment Act, 1878.
Limits of Act 18 & 19 Vict. c. 120.	II. This Act shall extend and apply to the Metropolis as defined by the Metropolis Management Act, 1855.
Division of Act into three parts.	III. This Act shall consist of three parts.

PART I.

Interpretation.	IV. In this part of this Act—
"Roadway."	The term "roadway" in relation to any road, passage, or way shall mean the whole space open for traffic, whether carriage traffic and foot traffic or foot traffic only:
"Centre of the roadway."	The term "centre of the roadway" in relation to any road, passage, or way existing at the time of the passing of this Act or thereafter formed shall mean the centre of the roadway of such road, passage, or way, as existing immediately before the time when first after the passing of this Act or the formation of the same any house or building fronting towards or abutting upon such road, passage, or way was begun to be constructed or extended:
"The prescribed distance."	The term "the prescribed distance" shall mean twenty feet from the centre of the roadway where such roadway is used for the purpose of carriage traffic and ten feet from the centre of the roadway where such roadway is used for the purposes of foot traffic only.
Metropolis Management Acts and this part of Act to be construed as one Act. 18 & 19 Vict. c. 120. 57 Geo. III. c. xxix.	V. The Metropolis Management Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act: Provided always, that nothing in this Act shall be held to limit or restrict the powers now vested in the Commissioners of Sewers of the city of London, or in any body or person elsewhere within the metropolis, by an Act passed in the

session of Parliament held in the fifty-seventh year of the reign of King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the Metropolis and removing and preventing nuisances and obstructions therein."

VI. From and after the passing of this Act no house or building begun to be constructed after the passing of this Act shall be constructed or begun to be constructed, and no house or building shall be extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in front of any such house or building, the external fence or boundary of such forecourt or other space, shall be at a distance less than the prescribed distance from the centre of the roadway of any road, passage, or way, whether a thoroughfare or not, being a highway, without the consent in writing of the Board: provided always, that the Board may, in any case where they think it expedient, consent to the construction, formation, or extension of any house, building, forecourt, or space at a distance less than the prescribed distance from the centre of the roadway of any such road, passage, or way, and at such distance from the centre of such roadway, and subject to such conditions and terms (if any) as they may think proper to sanction.

As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways being highways.

In every case where any such house, building, forecourt, or space is constructed, formed, or extended, or is begun to be constructed, formed, or extended, in contravention of the provisions of this section, at a distance from the centre of the roadway of any such road, passage, or way as aforesaid less than the prescribed distance, or than such other distance as may have been sanctioned by the Board, or contrary to the conditions and terms (if any) subject to which such sanction was obtained, the Board may serve a notice upon the owner or occupier of the said house, building, forecourt, or space, or upon the builder or person engaged in constructing, forming, or extending the same, requiring him to comply with the provisions of this section, and to cause such house, building, forecourt, or space, or any part thereof, to be set back so that the external wall of such house or building, or the external fence or

boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way as aforesaid, or at such distance and according to such conditions and terms (if any) as the Board may have sanctioned.

Provided always that the preceding provisions of this section shall not affect the *construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time within two years before the passing of this Act*, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this Act; and provided also, that the *construction or extension of any house or building in or abutting upon any street existing, formed, or laid out for building at the time of this Act may be begun and completed in like manner in every respect as if the preceding provisions of this section had not been made.*

As to erection of houses or buildings at less than prescribed distance from centre of roads, passages, or ways not being highways.

VII. Where after the passing of this Act any house or building begun to be constructed after the passing of this Act is constructed or is begun to be constructed, or any house or building is extended or begun to be extended, in such manner that the external wall or front of any such house or building, or, if there be a forecourt or other space left in the front of any such house or building, the external fence or boundary of such forecourt or space is at a distance from the centre of the roadway of any road, passage, or way (not being a highway) less than the *prescribed distance*, or less than such other distance as may have been sanctioned by the Board as hereinafter provided, or where, in relation to any such house, building, or forecourt, or space constructed, formed, or extended at such less distance than the prescribed distance with the sanction of the Board as aforesaid, the conditions or terms, if any, subject to which *such sanction was obtained have not been complied with, or the time during which such sanction was limited to continue has expired*, then and in every such case, where it is intended that *such road, passage, or way shall become a highway*, a *written notice* to that effect shall be served upon the Board, and thereupon the Board may at any time within two months after the receipt of such notice

serve a notice upon the owner or occupier of such house, building, forecourt, or space, or the builder or person engaged in constructing, forming, or extending the same, requiring him to cause the same, or any part thereof, to be set back so that the external wall or front of such house or building, or the external fence or boundary of such forecourt or space, shall be at a distance not less than the prescribed distance from the centre of the roadway of such road, passage, or way, or at such distance and according to such conditions and terms (if any) as the Board may have sanctioned, and unless and until such first-mentioned notice has been given to the Board and such last-mentioned notice (if any) has been complied with, such road, passage, or way shall not become a highway.

The Board may consent to the construction, formation, or extension of any house, building, forecourt, or space at any lesser distance than the prescribed distance from the centre of the roadway of any such road, passage, or way (not being a highway) as aforesaid, to be specified in such consent, or to the continuance of any house, building, forecourt, or space constructed, formed, or extended at such lesser distance, or to the continuance thereof for a limited time only, to be specified in such consent, in such cases and subject to such terms and conditions (if any) as they may think proper.

Provided always, that the preceding provisions of this section shall not affect the construction or extension of any house or building within the limits of any area which may have been lawfully occupied by any house or building at any time *within two years before the passing of this Act*, or the construction or extension of any house or building lawfully in course of construction or extension at the time of the passing of this Act.

VIII. In case any owner, occupier, builder, or person during twenty-eight days after the service of any notice under the preceding provisions of this part of this Act neglects or refuses to comply with the requirements of such notice, or after the expiration of such period fails to carry out or complete the works necessary for such compliance with all reasonable despatch, the Board may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons, requir-

Proceedings
in case of
default in
compliance
with require-
ments of
notice.

ing such owner, occupier, builder, or person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner, occupier, builder, or person, directing him to comply with the requirements of such notice within such time as such justice may consider reasonable, and such justice shall also make an order for the payment of the costs incurred up to the time of hearing, and of hearing; and in case such owner, occupier, builder, or person makes default in complying with the requirements of such notice within the time limited by such order, he shall be liable to a penalty of not less than forty shillings and not more than five pounds, and to a further penalty of not less than ten shillings and not more than forty shillings for each day during which such default continues after the first day after the expiration of the time limited by such order for compliance with the requirements of such notice: provided always, that this section shall not apply to any non-compliance with the notice of the Board in the case of an intended highway where *the same shall not be opened as a highway*.

Streets,
roads, &c.,
formed for
foot traffic
not to be
used without
consent of
Board for
carriage
traffic unless
widened.

IX. No street, road, passage, or way (being a highway) formed or laid out for foot traffic only after the passing of this Act shall, except with the consent of the Board, be used for the purposes of carriage traffic, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or if there be forecourts or other spaces left in front of such houses or buildings, the external fences or boundaries of such forecourts or other spaces; and in case any person alters any such street, road, passage, or way, so that it may be used for any traffic other than foot traffic, contrary to the provisions of this section, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter, or thing to facilitate the use of the same for

traffic other than foot traffic, contrary to the provisions of this section, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

X. No street, road, passage or way (being a highway) formed or laid out for foot traffic only before the passing of this Act shall be used for the purposes of carriage traffic for any longer period than seven consecutive days without the consent of a justice, unless the space open for foot traffic and carriage traffic be of the full width of forty feet where there are houses or buildings on each side thereof, or, where there are houses or buildings only on one side thereof, unless there be a distance of not less than twenty feet from the centre of the space open for foot traffic and carriage traffic and the external walls or fronts of such houses or buildings, or, if there be forecourts or other spaces left in front of such houses or buildings, the external fences or boundaries of such forecourts or other spaces, and any justice may grant such consent as aforesaid, or may do so subject to such terms and conditions as he may think fit; provided that twenty-eight days previous notice of any such application to a justice shall be served upon the Board, and the Board may appear at the time and place fixed for hearing such application and be heard thereon. In case any person alters any such street, road, passage, or way, so that it may be used for any traffic other than foot traffic, contrary to the provisions of this section, or to any conditions imposed by any such justice as aforesaid, or takes up or removes any post, bar, rail, flagstone, or knowingly does any act, matter, or thing to facilitate the use of the same for traffic other than foot traffic, contrary to the provisions of this section, he shall for every such offence be liable to a penalty not exceeding twenty pounds.

Streets, roads, &c. formed for foot traffic before passing of Act not to be used without consent of justice for carriage traffic unless widened.

XI. Whenever it appears to the Board that any house or other place of public resort within the metropolis which was at the time of the passing of this Act authorised to be kept open for the public performance of stage plays, and which is kept open for such purpose, under the authority of letters patent from Her Majesty, her heirs and successors or predecessors, or of a licence granted by the Lord Chamberlain of Her Majesty's Household for the time being, or by justices of the peace, or that any house, room, or other place of public

Power to Board in certain cases to require proprietors of theatres and certain music halls in use at the time of the passing of this Act to remedy structural defects.

resort within the metropolis, containing a superficial area for the accommodation of the public of not less than five hundred square feet, which was at the time of the passing of this Act authorised to be kept open, and which is kept open, for dancing, music, or other public entertainment of the like kind, under the authority of a licence granted by any court of quarter sessions, is so defective in its structure that special danger from fire may result to the public frequenting the same, then and in every such case the Board may, with the consent of the Lord Chamberlain in the case of theatres under his jurisdiction, and of Her Majesty's principal Secretary of State in all other cases, if in the opinion of the Board such structural defects can be remedied at a moderate expenditure, by notice in writing require the owner of such house, room, or other place kept open for any of the purposes aforesaid, under such authority as aforesaid, to make such alterations therein or thereto as may be necessary to remedy such defects, within a reasonable time to be specified in such notice; and in case such owner fails to comply with the requirements of such notice within such reasonable time as aforesaid, he shall be liable to a penalty not exceeding fifty pounds for such default, and to a further penalty of five pounds for every day after the first day after the expiration of such reasonable time as aforesaid during which such default continues: provided always, that any such owner may, within fourteen days after the receipt of any such notice as aforesaid, serve notice of appeal against the same upon the Board, and thereupon such appeal shall be referred to an arbitrator to be appointed by Her Majesty's First Commissioner of Works at the request of either party, who shall hear and determine the same, and may, on such evidence as he may think satisfactory, either confirm the notice served by the Board, or may confirm the same with such modifications as he may think proper, or refuse to confirm the same, and the decision of such arbitrator with respect to the requirements contained in any such notice, and the reasonableness of the same, and the persons by whom and the proportions in which the costs of such arbitration are to be paid, shall be final and conclusive and binding upon all parties.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

XII. The Board may from time to time make, alter, vary, and amend such regulations as they may think expedient with respect to the requirements for the protection from fire of houses or other places of public resort within the metropolis to be kept open for the public performance of stage plays, and of houses, rooms, or other places of public resort within the metropolis containing a superficial area for the accommodation of the public of not less than five hundred square feet, to be kept open for public dancing, music, or other public entertainment of the like kind, under the authority of letters patent from Her Majesty, her heirs or successors, or of licences by the Lord Chamberlain of Her Majesty's Household, or by any justices of the peace, or by any court of quarter sessions, which may be granted for the first time after the passing of this Act; and may by such regulations prescribe the requirements as to position and structure of such houses, rooms, or places of public resort which may, in the opinion of the Board, be necessary for the protection of all persons who may frequent the same against dangers from fires which may arise therein or in the neighbourhood thereof; provided that the Board may from time to time in any special case dispense with or modify such regulations, or may annex thereto conditions if they think it necessary or expedient so to do.

Power to
Board to
make regu-
lations with
respect to
new theatres
and certain
new music
halls for
protection
from fire.

The Board shall, after the making, altering, varying, or amending of any such regulations, cause the same to be printed, with the date thereof, and a printed copy thereof shall be kept at the office of the Board, and all persons may at all reasonable times inspect such copy without payment, and the Board shall cause to be delivered a printed copy, authenticated by their seal, of all regulations for the time being in force to every person applying for the same, on payment by such person of any sum not exceeding five shillings for every such copy.

A printed copy of such regulations, dated and authenticated by the seal of the Board, shall be conclusive evidence of the existence and of the due making of the same in all proceedings under the same, without adducing proof of such seal or of the fact of such making.

From and after the making of any such regulations it shall not be lawful for any person to have or keep open any such house, room, or other place of public resort for any of the purposes aforesaid, unless and until the Board grant to such person a certificate in writing under their seal, to the effect that such house, room, or other place was on its completion in accordance with the regulations made by the Board in pursuance of the provisions of this Act for the time being in force, and in so far as the same are applicable to such house or other place, and to the conditions (if any) annexed thereto by the Board.

In case any such house, room, or place of public resort is opened or kept open by any person for any of the purposes aforesaid, contrary to the provisions of this enactment, such person shall be liable to a penalty not exceeding fifty pounds for every day on which such house or place of public resort is so kept open as aforesaid.

Provisional
licence for
new pre-
mises.

XIII. A person interested in any premises about to be constructed, or in course of construction, which are designed to be licensed and used within the metropolis for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind, may apply to the licensing authority for the grant of a provisional licence in respect of such premises. The grant of such provisional licence shall, in respect of the discretion of the licensing authority and procedure, be subject to the same conditions as those applicable to the grant of a like licence which is not provisional. A provisional licence so granted shall not be of any force until it has been confirmed by the licensing authority ; but the licensing authority shall confirm the same on the production by the applicant of a certificate by the Board that the construction of the premises has been completed in accordance with the regulations and conditions made by the Board as hereinbefore provided,

and on being satisfied that no objection can be made to the character of the holder of such provisional licence.

PART II.

XIV. In this part of this Act—

The term “foundations” shall mean the space immediately beneath the footings of a wall : Interpretation.
“Foundations.”

The term “site” in relation to a house, building, or other erection shall mean the whole space to be occupied by such house, building, or other erection between the level of the bottom of the foundations and the level of the base of the walls. “Site.”

XV. The Metropolitan Building Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act. 18 & 19 Vict. c. 132, &c., and this part of this Act to be construed as one Act.

XVI. The Board may from time to time make, alter, vary, amend, and repeal such bye-laws as they may think expedient with respect to the following matters; (that is to say,) Power to Board to make bye-laws with respect to sites and foundations.

(1.) The foundations of houses, buildings, and other erections, and the sites of houses, buildings, and other erections to be constructed after the passing of this Act, and the mode in which and the materials with which such foundations and sites shall be made, formed, excavated, filled up, prepared, and completed for securing stability, the prevention of fires, and for purposes of health :

(2.) The description and quality of the substances of which walls are authorised to be constructed by section twelve of the Metropolitan Building Act, 1855, for securing stability, the prevention of fires, and for purposes of health : 18 & 19 Vict. c. 122, s. 12.

(3.) The duties of district surveyors in relation to such foundations and sites and substances, and for the guidance and control of such district surveyors in the exercise and discharge of such duties :

(4.) The regulation of the amounts of the fees to be paid to such district surveyors in respect of any duties imposed upon them by any such bye-laws or by this Act.

The Board may further provide by any bye-law that in any case in which the Board think it expedient they may dispense with the observance of any bye-law made under the authority of this part of this Act, subject to such terms and conditions, if any, as they may think proper; and such terms and conditions may be enforced in like manner in every respect as if the same had been enacted by such bye-law.

18 & 19 Vict.
c. 122, s. 56.

The Board may, subject as hereinafter mentioned, further provide for the due observance of such bye-laws by enacting therein such provisions as they think fit as to the deposit of plans and sections of public buildings, and buildings to which section fifty-six of the Metropolitan Building Act, 1855, applies, which shall be constructed after the passing of this Act, and as to inspection by the district surveyor or other officer of the Board of houses, buildings, and other erections to be constructed after the passing of this Act, and of the plans and sections relating thereto, and as to the power of the Board to cause the removal, alteration, or pulling down of any house, building, or other erection or work done or begun in contravention of any such bye-law, and by imposing such reasonable penalties as they think fit, not exceeding five pounds, for each breach of any such bye-law, and in case of a continuing offence a further penalty not exceeding forty shillings for each day after notice of such offence from the Board or district surveyor.

Any bye-law made in pursuance of this section, and any alteration, variation, and amendment made therein, and any repeal of a bye-law, shall not be of any validity until it has been confirmed by one of Her Majesty's principal Secretaries of State.

A bye-law made under this section shall not, nor shall any alteration, variation, or amendment therein or repeal thereof, be confirmed by one of Her Majesty's principal Secretaries of State until the expiration of two months after a copy of the bye-law, together with notice of the intention to apply for confirmation of the same, has been published by the Board, once at least in each of two consecutive weeks, in two or more newspapers circulating in the metropolis, and copies of such bye-law and notice have been delivered at the office of the Royal

Institute of British Architects and of the Institution of Surveyors, and to such other societies and persons as such principal Secretary of State may direct; and any person affected by any such proposed bye-law, or alteration, variation, or amendment in or repeal of any bye-law, may forward notice of his objection to such Secretary of State, who shall take the same into consideration.

All the provisions contained in sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, as to the making, publication, and evidence of bye-laws made by the Board under the authority of the said Act, and as to penalties for breach of the same, and the remission of such penalties, shall extend and apply to the making, publication, and evidence of bye-laws made by the Board under the authority of this Act, and to penalties for breach of any such bye-laws, and to the remission of such penalties.

18 & 19 Vict.
c. 120,
ss. 202-3.

XVII. In case any house, building, or other erection begun to be constructed after the passing of this Act is constructed or begun to be constructed upon any foundation or site or with any substances which have not been made, filled up, and prepared, or which are not in description and quality in accordance with the provisions of the bye-laws relating thereto made under the authority of this Act or in accordance with the terms and conditions subject to which the Board may have dispensed with the observance of any such provisions, the district surveyor may forthwith, by notice to be served on the occupier of such house, building, or other erection, or on the builder, owner, or other person engaged in constructing any such house, building, or other erection as aforesaid, require him to alter, pull down, or remove such house, building, or other erection, or any part thereof, as he may think proper; and in case any such occupier, builder, owner, or other person, during twenty-eight days after the service of such notice, fails to comply with the requirements of such notice, he shall be liable to a penalty of not less than ten shillings and not more than forty shillings for every day from the time of the service of such notice as aforesaid until such house, building, or other erection, or such part thereof, is altered, pulled down, or removed in

Provisions as
to buildings,
&c., not
erected on
foundations
or areas con-
formable
with bye-
laws, &c.

accordance with the terms of such notice, and every such penalty shall be in addition to any other penalty for breach of any bye-law.

Provided always, that, notwithstanding the imposition and recovery of any penalty, the Board at any time after default in compliance with the requirements of such notice, if they think proper, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier, builder, owner, or other person to appear at a time and place to be stated in the summons to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order in writing authorising the Board to enter and alter, pull down, or remove such house, building, or other erection, or any part thereof, and do whatever may be necessary for such purpose, and also to remove the materials of which the same was composed to a convenient place, and (unless the expenses of the Board be paid to them within fourteen days) subsequently sell the same as they think proper; and all expenses incurred in respect of such entering and altering, pulling down, or removing any such house, building, or other erection, and in disposing of the said materials, may be deducted by the Board out of the proceeds of such sale, and the balance, if any, shall be paid by the Board to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from such occupier, builder, owner, or other person, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this Act.

Power to
appeal.

XVIII. Any person affected by any notice under the preceding provisions of this part of this Act may, within seven days after the service of the same, appeal to the Board.

All such appeals shall stand referred to the Committee of Appeal appointed by the Board under and in pursuance of section two hundred and twelve of the Metro-

polis Management Act, 1855, for hearing appeals, who may hear and determine the same, and may order the district surveyor, or any other surveyor, to inspect any foundations, site, house, building, or other erection, and may, on such evidence as they think satisfactory, either confirm the notice served by the district surveyor, or may confirm the same with such modifications as they think proper, or refuse to confirm the same.

18 & 19 Vict.
c. 120, s. 212.

In case of an appeal against any such notice, compliance with the requirements of the same may be postponed until after the day upon which such appeal shall be so decided as aforesaid, and the same, if confirmed in whole or in part, shall only take effect as and from such day.

XIX. Where under the provisions of the Metropolitan Building Act, 1855, and the Acts amending the same, with respect to dangerous structures, any structure is sold for payment of the expenses incurred in respect thereof by the Board in manner prescribed by section seventy-four of the said Act, the person to whom the same is sold (hereinafter referred to as "the purchaser"), his agents and servants, may enter upon the land whereon such structure is standing for the purpose of taking down the same and of removing the materials of which the same is constructed, and any person who refuses to admit the purchaser, his agents or servants, upon such land, or impedes him in removing such materials, shall be liable on conviction to a penalty not exceeding ten pounds, and to a further penalty of five pounds for every day after the first day during which such refusal continues.

Amendment
of s. 74 of
18 & 19 Vict.
c. 122, with
respect to
sale of
dangerous
structures.

Where the proceeds of the sale of any such structure under the said seventy-fourth section are insufficient to repay the Board the amount of the expenses incurred by them in respect of such structure, no part of the land whereon such structure stands or stood shall be built upon until after the balance due to the Board in respect of such structure shall have been paid to the Board.

XX. Provided always, that the provisions of Part II. of this Act shall not extend or apply to the city of London.

Part II. of
Act not to
apply to city
of London.

PART III.

Power for
architect
and persons
authorised
by Board
and district
surveyor to
enter and
inspect
theatres,
music halls,
buildings,
and works.

XXI. The architect of the Board, and any other person authorised by the Board in writing under their seal, may, at all reasonable times after completion or during construction, enter and inspect any house, room, or other place kept open or intended to be kept open for the public performance of stage plays, or for public dancing, music, or other public entertainment of the like kind affected by any of the provisions of this Act, or of any regulations made in pursuance thereof; and the district surveyor of any district may at all reasonable times during the progress and the three months next after the completion of any house, building, erection, or work in such district affected by and not exempted from any of the provisions of this Act, or by any bye-law made in pursuance of this Act, or by any terms or conditions upon which the observance of any such provisions or any of such bye-laws may have been dispensed with, enter and inspect such house, building, erection, or work; and if any person refuses to admit such architect, person, or surveyor, or to afford him all reasonable assistance in such inspection, in every such case the person so refusing shall incur for each offence a penalty not exceeding twenty pounds.

Power to
owners, &c.,
to enter
houses, &c., to
comply with
notices or
order.

XXII. For the purpose of complying with the requirements of any notice or order served or made under the provisions of this Act on any owner, builder, or person in respect of any house, building, or other erection, room, or place, such owner, builder, or person, his servants, workmen, and agents, may, after giving seven days' notice in writing to the occupier of such house, building, or other erection, room, or place, and on production of such notice or order, enter such house, building, or other erection, room, or place, and do all such works, matters, and things therein or thereto, or in connection therewith, as may be necessary; and if any person refuses to admit such owner, builder, or person, or his servants or workmen or agents, or to afford them all reasonable assistance, such person shall incur for each offence a penalty not exceeding twenty pounds.

Re-

XXIII. Every penalty imposed by Part I. and Part III. of this Act may be recovered by summary

proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolis Management Act, 1855, and the Acts amending the same; and every penalty imposed by Part II. of this Act, or by any bye-law made in pursuance thereof, may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855, and the Acts amending the same: Provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act or of any bye-law made in pursuance of this Act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

18 & 19 Vict.
c. 120.

18 & 19 Vict.
c. 122.

XXIV. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolis Management Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions
from Metro-
politan
Management
Acts ex-
tended to
this Act.
18 & 19 Vict.
c. 120.

XXV. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolitan Building Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions
from Metro-
politan
Building
Acts ex-
tended to
this Act.
18 & 19 Vict.
c. 122.

XXVI. Nothing in this Act, or in any bye-law of the Board thereunder, shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Act not to
apply to the
Inner and
Middle
Temple, &c.

XXVII. Nothing contained in this Act, or in any bye-law thereunder made, shall apply to or shall authorise or empower the Board, or any vestry, district board,

Saving rights
of the Crown
and the
Duchy of
Lancaster.

or district surveyor, to take, use, or in any manner interfere with any land, soil, tenements, or hereditaments, or any rights of whatsoever nature, belonging to or enjoyed or exercisable by the Queen's most Excellent Majesty in right of her Crown, or in right of her Duchy of Lancaster, without the consent in writing of the Commissioners for the time being of Her Majesty's Woods, Forests, and Land Revenues, or one of them, on behalf of Her Majesty, in right of her Crown, first had and obtained for that purpose (which consent such Commissioners are hereby respectively authorised to give), or without the consent in like manner of the Chancellor of the said Duchy, on behalf of Her Majesty, in right of her said Duchy; neither shall anything contained in this Act, or in any bye-law thereunder made, extend to, divest, take away, prejudice, diminish, or alter any estate, right, privilege, power, or authority vested in or enjoyed or exercisable by the Queen's Majesty, her heirs or successors, in right of her Crown, or in right of her said Duchy; and nothing contained in Part I. of this Act shall apply to the extension of Savoy Street or the bridge which the Chancellor and Council of the said Duchy are by the Metropolitan Board of Works (Various Powers) Act, 1875, empowered to make and construct, or to any house or building within the precinct of the Savoy, or upon the land mentioned in section six of the last-mentioned Act, constructed or extended after the passing of this Act, in or abutting upon any road, passage, or way existing, formed, or laid out at the time of the passing of this Act.

34 & 39 Vict.
c. 65.

I next give the rules and regulations in force in the Superintending Architect's department with respect to applications to the Metropolitan Board of Works, by following which much trouble and delay will be saved.

1. PROJECTIONS, GENERAL LINES OF BUILDINGS, &c.

All applications must be made in writing on foolscap paper, setting forth the nature of the building, work, or other matter; the situation and district in which the same is to be built; also describing all necessary particulars as to the proposed mode of construction; and

stating under which section of the Act the sanction is sought; and be accompanied by a block plan in duplicate* on tracing cloth, drawn to a scale of 44 feet to one inch for general lines of buildings, and 22 feet to one inch for projections. The dimensions must be figured thereon, and the situation of the building shown with reference to adjoining buildings, and to the ground of any adjoining owner.

No application relative to any building, structure, or erection proposed to be erected beyond the general line of fronts of buildings under section 75 of the Metropolis Local Management Amendment Act, 1862, or the 26th section of the Metropolitan Building Act, will be granted, unless a notice that such application is to be made shall have been given to or left by an officer of the Board for the occupiers of the two adjoining buildings on each side of the proposed building; and no such application will be brought before the Board until after the expiration of fourteen days from the date of such notice, unless the parties upon whom such notice has been served shall have previously sent in their replies to this office.

2. FORMATION OF NEW STREETS.

(Bye-Law and Metropolis Management Amendment Acts, 1862 and 1878.)

Applicants for the approval of the width of streets are required to furnish two copies † of the applications and plans in duplicate; the plans to be drawn to a scale of 88 feet to the inch, or 5 feet to one mile. A copy is forwarded to the vestry or district board in whose locality the proposed new street is situate, with an intimation that within fourteen days thereafter suggestions may be made with reference to such application, as in the case of lines of frontage. A key plan of the locality and two copies of longitudinal sections showing intended levels of proposed roads, are also required.

No plan submitted for the formation of a new street can be entertained unless the applicant, at the same

* A third copy of plans is required when approved.

† Two further copies of approved plans are required; one of which is signed and returned to the applicant.

time, submits the name proposed to be given to such street. The name must be one not elsewhere in use.

The name of each street, as approved by the Board, will have to be affixed on posts at both ends of such street until the houses are built, when the name must be affixed according to law.

3. FURNACE CHIMNEY-SHAFTS, IRON BUILDINGS, &c.

(§ 56, Metropolitan Building Act, 1855.)

All builders or other persons who may be desirous of erecting any chimney-shaft of a steam-engine, brewery, distillery, or manufactory, or any iron building or other building to which the rules of the Metropolitan Building Act, 1855, are inapplicable, shall, before commencing any such building, make an application to this Board requesting their approval thereof, and send a plan and section (with all scantlings figured) of the proposed building, and such other necessary particulars as may be required by the Board. The scale of drawings must be one quarter of an inch to one foot.

When a chimney-shaft is applied for, the arrangements to be made for the consumption of the smoke from the furnaces, with reference to the Sanitary Act of 1866, must be shown on plan.

4. OFFICE FEES.

(§ 60, Metropolitan Building Act.)

Persons applying for the approval of buildings under the 56th section of the Building Act must pay to the Cashier of the Board a fee of five shillings on depositing the application, and a further fee of five shillings on obtaining a notification of the order of the Board approving of the design for a building; and in no case will the work be allowed to proceed until the fees are paid.

5. DUPLICATE DRAWINGS.

(§ 61, Metropolitan Building Act.)

In the event of the sanction of the Board being granted, duplicate drawings or tracings on cloth must be supplied by the applicant for the district surveyor.

6. LICENCES FOR KEEPING PETROLEUM.

(Act, 1871.)

Applications for licences under the Act must be accompanied by full particulars and a plan of the premises in which petroleum is proposed to be kept, with a view to each place being examined and reported upon by the superintending architect of the Board.

Fourteen days previously to the consideration by the Board of an application for a licence under the Petroleum Act, notice of such application has to be affixed to the premises in respect to which such licence is applied for; such notice being affixed with the consent of the applicant, who is to be responsible for its remaining where placed.

7. NAMING STREETS AND NUMBERING HOUSES.

(Metropolis Management Amendment Act, 1862, § 87.)

Persons building continuous blocks of houses or streets would facilitate their own operations with reference to leases, and the subsequent numbering required by the Metropolitan Board of Works under the statute of 1862, by observing the practice at present followed in numbering houses—

1.—St. Paul's Cathedral is recognised as a central point, and the numbering of houses begins at the end or entrance of the street nearest to that building; but where both entrances to a street are about equally distant, the numbering begins at the entrance abutting on the most important thoroughfare.

2.—Taking, therefore, the sides of the streets as left and right (assuming that the back is towards St. Paul's), the odd numbers will be assigned to the left-hand side, and the even numbers to the right-hand side.

3.—No name is to be used for a street unless with the approval of the Board; and it must be a name consisting, if possible, of one word, with the addition of "street" or "road," &c., not already in use in the metropolis in street nomenclature. Only such streets as are leading thoroughfares of considerable length can be designated "roads."

4.—Names for terraces, or places, or other blocks of houses, and sections of streets, usually known as sub-

sidiary names, will not be recognised ; nor such names as are already in use for provincial towns and postal places.

8. NOTICE TO PREVENT THE UNAUTHORISED ADOPTION OF NAMES FOR NEW STREETS.

1.—A strict observance of the provisions of section 87 of the Local Management Act of 1862 in relation to the names of streets is hereby enjoined on all builders, owners of land, and surveyors, or persons whom it may concern.

The Act provides that—

- (1.) Before any name is given to any street, notice of the intended name shall be given to the Metropolitan Board of Works.
- (2.) The Board may, by notice in writing given to the person by whom notice of such intended name has been given, at any time within one calendar month after receipt of such notice, object to such intended name.
- (3.) It shall not be lawful to set up any name to any new street in the metropolis until the expiration of one calendar month after notice thereof has been given as aforesaid to the said Board, or to set up any name objected to as aforesaid.
- (4.) If any person set up any name contrary to the enactment, he shall, for every offence, forfeit a sum not exceeding forty shillings.

2.—If any unauthorised street name is marked on a plan for the construction of a sewer, any action on such plan may be deferred until the name has been approved by the Board ; or, if found objectionable, until an approved name has been substituted.

3.—The person making such application will be held liable to the Board for any penalty incurred under the statute.

9. CERTIFIED COPIES OF ORDERS.

Any person interested in property affected by any order of the Board for re-naming streets or re-numbering houses, is permitted, on application, to make a copy of the order and a tracing of the plan attached thereto ; or

a certified copy of such order and plan will be furnished to him on his paying the actual cost of making the same.

The average charge for each copy order, &c., is one shilling and sixpence.

10. DECISIONS AS TO GENERAL LINE OF BUILDINGS.

The following rules are to be observed in cases in which the superintending architect of the Metropolitan Board may be required to decide the general line of buildings in any street, place, or row of houses under the power conferred on him by the 75th section of the Metropolis Management Act, 1862.

1.—Persons interested in the buildings objected to are to be heard by the superintending architect.

2.—They can be heard on any Thursday at twelve o'clock, or at such other time as the architect may appoint, on giving two days' notice at the least.

3.—A plan to a large scale, or 44 feet to the inch, will be required to show the line of buildings and projections in the street, place, or row of houses in question.

11. DISAGREEMENTS BETWEEN DISTRICT SURVEYORS AND BUILDERS AS TO PUBLIC BUILDINGS.

In any case where a disagreement shall arise between the district surveyor and the builder or building surveyor, under the provisions contained in the 30th section of the Metropolitan Building Act, as to the mode of constructing any public building upon which the decision of the Board becomes necessary, the question shall be brought before the Board by one of the parties on a memorial setting forth the facts of the case, accompanied by plans and explanations; upon receipt of these the superintending architect is to communicate with the other party, and require him to furnish similar information in support of his case; and when the same shall have been received, the whole matter is to be laid before the Board, before whom the parties are to be required to appear with witnesses if necessary.

October, 1879.

I bring my work to a conclusion by giving in extenso the Act just passed, 19th June, 1882, and which gives more power to the Metropolitan Board of Works.

I may again mention that those of its provisions which vary the Metropolitan Building Act of 1855 will be found in this work under the sections altered.

METROPOLIS MANAGEMENT AND BUILDING ACTS AMENDMENT ACT, 1882.

(45 Vict. ch. 14.)

ARRANGEMENT OF SECTIONS.

PART I.

1. Short title.
2. Limit of Act.
3. Division of Act into four parts.

PART II.

4. Metropolis Management Acts and Part II. of Act to be construed as one Act.
5. Power of Board to name and number streets in default of vestries, &c., complying with order of Board.
6. Preventing obstruction of streets.
7. Provisions as to new streets.
8. Provisions restricting in certain cases the laying out of streets for foot traffic only.
9. Board may annex and enforce conditions as to space to be left open where building is erected beyond the general or regular line of building.
10. Power to Board to exercise powers of vestries and district boards under s. 75 of 25 & 26 Vict. c. 102, with respect to buildings, &c., erected beyond general line of buildings.

PART III.

11. The Metropolitan Building Act and Part III. of Act to be construed as one Act.
12. Board may impose condition requiring removal of iron

- or other buildings of a temporary character within certain period.
13. Temporary or movable wooden structures or erections not to be erected without licence of Board.
 14. As to open spaces to dwellings.
 15. Conversion of houses, &c., into public buildings.
 16. Amendment of provisions of 18 & 19 Vict. c. 122, s. 21 with respect to hot-water pipes.
 17. Dilapidated and neglected buildings.
 18. Provisions for better securing payments to Board of expenses incurred by Board in respect of dangerous or neglected structures.
 19. As to summonses and notices in the cases of dangerous and neglected structures.
 20. Proceedings as to irregular buildings, &c.
 21. Provisions as to settlement of differences between building and adjoining owners.

PART IV.

22. Recovery of penalties.
23. Exceptions from Metropolis Management Acts extended to this Act.
24. Exceptions from Metropolitan Building Acts extended to this Act.
25. Act not to apply to the Inner and Middle Temple, &c.
26. Sections six, seven, eight, and thirteen not to apply to city of London.
27. Expenses of Act.



CHAP. XIV.

An Act to confer further powers upon the Metropolitan Board of Works with respect to Streets and Buildings in the Metropolis.
[19th June 1882.]

WHEREAS it is expedient to provide for the better management of the metropolis by conferring further powers upon the Metropolitan Board of Works (in this Act referred to as "the Board") with respect to the management of

existing streets and the formation of new streets, and the regulation of buildings and structures in the metropolis :

18 & 19 Vict.
c. 120.
18 & 19 Vict.
c. 122, &c.

And whereas for the purpose aforesaid it is expedient to amend the Metropolis Management Act, 1855, the Metropolitan Building Act, 1855, and the Acts amending the same respectively :

And whereas the objects aforesaid cannot be effected without the authority of parliament :

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Short title.

I. This Act may be cited for all purposes as the Metropolis Management and Building Acts Amendment Act, 1882.

Limit of Act.

II. This Act shall extend and apply to the metropolis as defined by the Metropolis Management Act, 1855.

Division of
Act into
four parts.

III. This Act shall consist of four parts.

PART II.

Metropolis
Management
Acts and Part
II. of Act to
be construed
as one Act.

IV. The Metropolis Management Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act.

Power of
Board to
name and
number
streets in de-
fault of ves-
tries, &c.,
complying
with order
of Board.
25 & 26 Vict.
c. 102.

V. Whenever the Board have transmitted a copy of any order made by them in pursuance of the provisions of the eighty-seventh section of the Metropolis Management Amendment Act, 1862, to any vestry or district board, or to the Commissioners of Sewers of the city of London, and such vestry or district board or commissioners have for the space of three calendar months after the receipt of such order failed to perform all or any of the necessary Acts or to take all or any of the requisite proceedings for carrying such order into execution, then and in every such case the Board may perform all or any of such necessary Acts or take all or any of such necessary proceedings which such vestry or district board or commissioners have failed to perform or take ; and for such purpose, and generally for giving effect to the provisions of the said section, as amended by this section, the Board shall have and may exercise

all the rights, powers, authorities, and jurisdiction by the said section conferred upon vestries, district boards, and the said commissioners respectively, including the recovery of expenses from owners of houses and buildings, and the said section shall be construed accordingly.

VI. In case any person not being lawfully authorised knowingly erects or places, or causes to be erected or placed, any post, rail, fence, bar, obstruction, or encroachment whatsoever in, upon, over, or under any street, or alters or interferes with any street, in such a manner as to impede or hinder the traffic for which such street was formed or laid out from passing over the same, he shall (in addition to any other proceeding to which he may be liable therefor) be liable to a penalty not exceeding ten pounds for every such offence, and to a further penalty not exceeding forty shillings for every day on which such offence is continued after the day on which he shall have received notice in writing from the Board to remove such post, rail, fence, bar, obstruction, or encroachment, and to reinstate or restore such street to its former condition; and the Board may, at the expiration of two days after giving such notice as aforesaid, demolish or remove any such post, rail, fence, bar, obstruction, or encroachment, and reinstate or restore such street to its former condition, and recover the expenses thereof in like manner as if the same were a penalty imposed by this part of this Act.

Preventing
obstruction
of streets.

VII. Where after the passing of this Act it is intended by any person to form or lay out any road, passage, or way for building as a street for the purposes of carriage traffic or of foot traffic only, in such manner that such road, passage, or way will not afford direct communication between two streets, such person shall, at least three months before such road, passage, or way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the proposed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out in manner aforesaid, or that such road, passage, or way should be formed or laid out in manner aforesaid subject

Provisions
as to new
streets.

to any conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the formation or laying out of such road, passage, or way in manner aforesaid, or may sanction the formation or laying out of such road, passage, or way in manner aforesaid subject to such conditions as they may prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street in manner aforesaid where the Board have declined their sanction, or shall not be formed or laid out for building as a street in manner aforesaid, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any road, passage, or way so formed or laid out in manner aforesaid contrary to the provisions of this section shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which the offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

VIII. Where after the passing of this Act it is intended by any person to form or lay out any road, passage, or way for building as a street for foot traffic only, such person shall, at least three months before such road, passage, or way is begun to be so formed or laid out, make an application to the Board giving notice of such intention, and setting out a plan of the proposed street, with such particulars in relation thereto as may be required by the Board, and if it appears to the Board that it is expedient that such road, passage, or way should not be formed or laid out for foot traffic only, or

Provisions
restricting in
certain cases
the laying
out of streets
for foot
traffic only.

that such road, passage, or way should be formed or laid out for foot traffic only subject to any conditions which the Board may prescribe, the Board may, by order made at any time before the expiration of the said period of three months, decline to sanction the forming or laying out of the same for foot traffic only, or may sanction the formation or laying out of such road, passage, or way for foot traffic only subject to such conditions as they may think proper to prescribe, and thereupon, and until the Board shall otherwise direct, such road, passage, or way shall not be formed or laid out for building as a street for foot traffic only where the Board have declined their sanction, or shall not be formed or laid out for building as a street for foot traffic only, except in accordance with the conditions prescribed, where the Board have given their sanction subject to such conditions.

Any person forming or laying out, or commencing to form or lay out, or keeping open any such road, passage, or way for foot traffic only contrary to the provisions of this section shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding twenty shillings for every day on which such offence is continued after the day on which the first penalty is incurred.

Provided always, that in case the said person so intending to form or lay out any road, passage, or way as aforesaid, considers that any of the conditions prescribed by the Board are unreasonable, then the said person so objecting to the said conditions may appeal to the police magistrate for the district in which the said road, passage, or way is situate, and his decision shall be final upon the question.

IX. Where the Board consent in writing, under section seventy-five of the Metropolis Management Amendment Act, 1862, to the erection by any person of a building or part of a building or erection in any street, place, or row of houses beyond the general or regular line of buildings in such street, place, or row of houses, the Board may annex to such consent, if they think fit, any conditions they may think proper as to the amount of land in front of such building, part of a building, or erection which shall be dedicated to or left

Board may annex and enforce conditions as to space to be left open where building is erected beyond the general or regular line of building.

open for the use of the public; and where the Board have annexed to such consent to the erection of such building, part of a building, or erection any such condition, then and in every such case such condition shall within three months after the erection of such building, part of a building, or erection be fulfilled, and if such person fails to fulfil such condition within such period as aforesaid he shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day upon which such condition continues to be unfulfilled after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty under this section, the Board, at any time after default in the fulfilling of any such condition, may cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring the owner or occupier of such building, part of a building, or erection, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice shall make an order in writing on such owner or occupier directing the demolition of such building, part of a building, or erection, or so much thereof as may be beyond such general or regular line, within such time as such justice shall consider reasonable, and shall also make an order for the costs incurred up to the time of the hearing; and in default of the building, part of a building, or erection complained of being demolished within the time limited by such order, the Board may forthwith enter the premises to which the order relates and demolish the building, part of a building, or erection complained of, and do whatever may be necessary to execute such order, and may also remove the materials of which the same was composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred by the Board in executing such order and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance, if any, shall be

paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from such owner or occupier, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this Act.

X. The powers conferred by the seventy-fifth section of the Metropolis Management Amendment Act, 1862, upon the vestry of any parish and the board of works of any district with respect to any building or erection situate in such parish or district in case such building or erection has been erected, or begun to be erected or raised, beyond the general line of buildings in the street, place, or row of houses in which the same is situate without the consent in writing of the Board, or contrary to the terms and conditions on which such consent may have been granted (including the powers for the recovery of expenses), shall extend and apply to and may be exercised by the Board in like manner as by such vestry or board of works.

Power to Board to exercise powers of vestries and district boards under s. 75 of 25 & 26 Vict. c. 102, with respect to buildings, &c., erected beyond general line of buildings.

PART III.

XI. The Metropolitan Building Act, 1855, and the Acts amending the same, and this part of this Act shall be construed together as one Act.

The Metropolitan Building Act and Part III. of Act to be construed as one Act.

XII. Whenever an application is made to the Board by any person stating his desire to erect in any place any iron or other building of a temporary character to which the rules of the Metropolitan Building Act, 1855, and the Acts amending the same, are inapplicable, the Board may, in case of their approval of the plan and particulars of such building, limit the period during which such building shall be allowed to remain in such place, and may make such approval subject to such conditions as to the removal of such building or otherwise as they may think fit; and if at the expiration of the period limited by the Board during which such building is allowed to remain in such place such building is not removed in accordance with such conditions,

Board may impose condition requiring removal of iron or other buildings of a temporary character within certain period.

the Board may, by notice in writing, require the occupier or owner of such building to remove such building within a reasonable time, to be specified in such notice, and in case such occupier or owner fails to comply with the requirements of such notice within such time as aforesaid he shall be liable to a penalty not exceeding five pounds for such default, and to a further penalty not exceeding forty shillings for every day on which such default continues after the day on which the first penalty is incurred.

Provided always, that notwithstanding the imposition and recovery of any penalty, the Board may, at any time after default in complying with the requirements of such notice, if they think proper, cause complaint thereof to be made before a justice of the peace, who shall thereupon issue a summons requiring such occupier or owner to appear, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may make an order, in writing, authorising the Board to enter upon the land upon which such building is situated, and to remove or take down the same, and do whatever may be necessary for such purpose, and also to remove the materials of which the same is composed to a convenient place and (unless the expenses of the Board be paid to them within fourteen days after such removal) sell the same as they think proper; and all expenses incurred in respect of any such order, and of entering and removing or taking down any such building, and in disposing of the said materials may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto; and in case such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the occupier or owner of such building, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this part of this Act.

XIII. It shall not be lawful for any person to erect or set up in any place any wooden structure or erection of a movable or temporary character (unless the same be exempt from the operation of the first part of the Metropolitan Building Act, 1855,) without a licence in writing first had and obtained from the Board for the erection or setting up of such structure or erection in such place, and every such licence may contain such conditions with respect to such structure or erection and the time for which it is to be permitted to continue in such place as the Board may think expedient; and if any person erects or sets up any such structure or erection in any place without having had and obtained such licence to erect or set up the same in such place, or makes default in observing any of the conditions contained in such licence, or is guilty of any breach of such conditions, he shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day on which any such structure or erection continues erected or set up, without such licence being had and obtained, or upon which such default or breach continues after the day on which the first penalty is incurred.

Temporary or movable wooden structures or erections not to be erected without licence of Board.

Provided always, that a licence shall not be required in the case of any wooden structure or erection of a movable or temporary character erected by a builder for use during the construction, alteration, or repair of any building, unless the same is not taken down or removed immediately after such construction, alteration, or repair.

XIV. Every new building begun to be erected upon a site not previously occupied in whole or in part by a building, after the passing of this Act, intended to be used wholly or in part as a dwelling house, shall, unless the Board otherwise permit, have directly attached thereto and in the rear thereof an open space exclusively belonging thereto of the following extent:

As to open spaces to dwellings.

Where such building has a frontage not exceeding 15 feet the extent of the open space shall be 150 square feet at the least;

Where such building has a frontage exceeding 15 feet, but not exceeding 20 feet, the extent of the open space shall be 200 square feet at the least;

Where such building has a frontage exceeding 20 feet,

and not exceeding 30 feet, the extent of the open space shall be 300 square feet at the least ; and Where such building has a frontage exceeding 30 feet the extent of the open space shall be 450 square feet at the least.

Every such open space shall be free from any erection thereon above the level of the ceiling of the ground-floor story, and shall extend throughout the entire width (exclusive of party or external walls) of such building at the rear thereof.

The provisions of this enactment shall be in addition to and shall form part of the rules of the Metropolitan Building Act, 1855, and the said Act shall be construed accordingly.

Conversion
of houses,
&c., into
public build-
ings.

XV. Where it is proposed to convert or alter any building erected for a purpose other than a public purpose into a public building within the meaning of the Metropolitan Building Act, 1855, and the Acts amending the same, such conversion or alteration, and the public building thereby formed, including the walls, roofs, floors, galleries, and staircases of the same, shall be carried into effect and constructed respectively in such manner as may be approved by the district surveyor, or in the event of disagreement may be determined by the Board, and the provisions of the Metropolitan Building Act, 1855, and of the Acts amending the same, with respect or applicable to the construction of public buildings shall extend and apply to such alteration or conversion as though such alteration or conversion were the construction of a public building.

amendment
of provisions
of 18 & 19
Vict. c. 122.
s. 21 with
respect to
hot-water
pipes.

XVI. From and after the passing of this Act the restrictions imposed by the twenty-first section of the Metropolitan Building Act, 1855, with respect to the distance at which pipes for conveying hot water or steam may be placed from any combustible materials shall not apply in the case of pipes for conveying hot water or steam at low pressure.

Dilapidated
and neg-
lected build-
ings.

XVII. Where a building or structure is ruinous, or so far dilapidated as thereby to have become and to be unfit for use or occupation, or is from neglect or otherwise in a structural condition prejudicial to the property in or the inhabitants of the neighbourhood, the Board may make complaint thereof to a justice of the peace,

who shall thereupon issue a summons requiring the owner and occupier of such building or structure (hereinafter referred to as a "neglected structure"), to appear, at a time and place to be stated in the summons, to answer such complaint, and if at the time and place appointed in such summons the said complaint is proved to the satisfaction of the justice before whom the same is heard, such justice may, if he sees good cause, order the owner or, on his default, the occupier to take down or repair or rebuild the neglected structure or any part thereof, or to fence in the ground upon which the same stands, or any part thereof, or otherwise to put the same or any part thereof into a state of repair and good condition, to the satisfaction of the Board, within a reasonable time to be fixed by the order, and may also make an order for the costs incurred up to the time of the hearing.

If the order is not obeyed the Board may, with all convenient speed, enter upon the neglected structure or such ground as aforesaid and execute the order.

Where the order directs the taking down of a neglected structure or any part thereof, the Board, in executing the order, may remove the materials to a convenient place and (unless the expenses of the Board under this section in relation to such structure be paid to them within fourteen days after such removal) sell the same as they think fit.

All expenses incurred by the Board under this section in relation to a neglected structure may be deducted by the Board out of the proceeds of such sale, and the balance (if any) shall be paid by the Board on demand to the person entitled thereto, and in case such neglected structure or some part thereof is not taken down, and such materials are not sold by the Board, or in case the proceeds of the sale of the same are insufficient to defray the expenses incurred by the Board as aforesaid, the Board may recover such expenses or such insufficiency from the owner of such neglected structure, together with all costs and expenses in respect thereof, in like manner as if the same were a penalty imposed by this Act, but without prejudice to his right to recover the same from any lessee or other person liable to the expenses of repairs.

Provisions
for better
securing
payments to
Board of ex-
penses in-
curred by
Board in
respect of
dangerous or
neglected
structures.

XVIII. Where under the provisions of the Metropolitan Building Act, 1855, and the Acts amending the same, with respect to dangerous structures, or under the provisions of this Act with respect to neglected structures, the Board have incurred any expenses in respect of any dangerous structure or any neglected structure, and have not been paid or have not recovered the same, the Board may, after giving notice of their intention to do so, in manner hereinafter mentioned, to the owner of such dangerous or neglected structure, apply to a justice of the peace, at the time and place named in such notice, for an order fixing the amount of such expenses and the costs of such application, and directing that no part of the land upon which such dangerous or neglected structure stands or stood shall be built upon, or that no part of such neglected structure, if repaired or rebuilt, shall be let for occupation until after payment to the Board of the amount of such expenses and costs as fixed by such order; and such justice, on proof of such expenses having been incurred by the Board, and after hearing the parties appearing before him, may make such order as aforesaid, and thereupon and until payment to the Board of the amount fixed by such order no part of such land shall be built upon, and no part of such neglected structure so repaired or rebuilt shall be let for occupation.

Every such order shall be signed in duplicate by such justice, and one of such orders shall be retained by the officer of the court in which such justice made the same, and the other of such orders shall be kept at the office of the Board.

The Board shall keep at their principal office a register of all such orders as may from time to time be made under the authority of this section, and shall keep the same open for inspection by all persons at all reasonable times, and any such order not entered in such register within ten days after the making of the same shall cease to be of any force or effect.

A notice of the intention to make an application for any such order may be printed or written, or partly printed and partly written.

XIX. Any summons or notice under this Act with respect to a dangerous or neglected structure shall be served or given in accordance with the provisions of section ninety-eight of the Metropolitan Building Act,

As to sum-
monses and
notices in

1855: Provided always, that where the owner of any such dangerous or neglected structure is not known to or cannot be found by the Board or their officers, any such summons or notice shall be deemed to be duly served or given if a copy of the same be posted in a conspicuous place on such dangerous structure or neglected structure, or on the land whereon it stands or stood, at least two months before the time named in such summons or notice for the hearing of such complaint or for the making of such application.

XX. Proceedings with respect to any irregular building or structure shall not be prejudiced or affected by the removal or falling in of the roof of such building or structure. Proceedings as to irregular buildings, &c.

XXI. Where in any case not specially provided for by the Metropolitan Building Act, 1855, a difference has arisen between a building owner and an adjoining owner in respect of any matter arising under the said Act, and both parties have concurred in the appointment of one surveyor for the settlement of such difference in manner prescribed by section eighty-five of the Metropolitan Building Act, 1855, then and in every such case, if such surveyor refuses or for seven days neglects to act, or dies, or becomes incapable to act before he has made his award, the matters in dispute shall be determined, under the provisions of the said section, in the same manner as if such single surveyor had not been appointed. Provisions as to settlement of differences between building and adjoining owners.

When any such difference as aforesaid has arisen and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, and a third surveyor has been selected, then and in every such case, if such third surveyor refuses or for seven days neglects to act, or before such difference is settled dies or becomes incapable to act, the two surveyors shall forthwith, after such refusal, neglect, death, or incapacity, select another third surveyor in his place, and every third surveyor so to be selected as aforesaid shall have the same powers and authorities as were vested in the third surveyor at the time of such his refusal, neglect, death, or incapacity as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then, if the two surveyors so appointed refuse

or for seven days after request of either party neglect to select a third surveyor or another third surveyor in the event of the refusal or neglect to act, death, or incapacity of the third surveyor for the time being, one of Her Majesty's principal Secretaries of State may, on the application of either party, select some fit person to act as third surveyor, and every surveyor so selected as aforesaid shall have the same powers and authorities as if he had been selected as a third surveyor by the two surveyors so appointed by the parties.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if before such difference is settled any such surveyor so appointed as aforesaid by either party dies or becomes incapable to act, the party by whom such surveyor was appointed may appoint in writing some other surveyor to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so, the remaining or other surveyor may proceed *ex parte*, and the decision of such remaining or other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred, and every surveyor so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former surveyor at the time of such his death or disability as aforesaid.

When any such difference as aforesaid has arisen, and each party has appointed a surveyor for the settlement of such difference in manner prescribed by the said section, then and in every such case, if either of the surveyors refuses or for seven days neglects to act, the other surveyor may proceed *ex parte*, and the decision of such other surveyor shall be as effectual as if he had been a single surveyor in whose appointment both parties had concurred.

PART IV.

Recovery of
penalties.

XXII. Every penalty imposed by Part II. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right

of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolis Management Act, 1855, and the Acts amending the same; and every penalty imposed by Part III. of this Act may be recovered by summary proceedings before any justice in like manner and subject to the like right of appeal as if the same were a penalty recoverable by summary proceedings under the Metropolitan Building Act, 1855, and the Acts amending the same: provided always, that in any proceedings against any person for more than one penalty in respect of one or more breach or breaches of any provision of this Act, or of any bye-law made in pursuance of this Act, it shall be lawful to include in one summons all such penalties, and the charge for such summons shall not exceed two shillings.

XXIII. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolis Management Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all special exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions from Metropolis Management Acts extended to this Act. 18 & 19 Vict. c. 120.

XXIV. Her Majesty's royal palaces, and all buildings, works, and ground excepted from the operation of the Metropolitan Building Act, 1855, and the Acts amending the same, or of any of the said Acts, shall be excepted from the operation of the provisions of this Act which are to be construed with such Acts, and all special exemptions from the provisions of any of the said Acts shall extend to such of the provisions of this Act as are to be construed as aforesaid with such Acts.

Exceptions from Metropolitan Building Acts extended to this Act. 18 & 19 Vict. c. 122.

XXV. Nothing in this Act shall apply to the Inner Temple, the Middle Temple, Lincoln's Inn, Gray's Inn, Staple Inn, Furnival's Inn, or the close of the collegiate church of Saint Peter, Westminster.

Act not to apply to the Inner and Middle Temple, &c.

XXVI. The provisions of sections six, seven, eight, and thirteen of this Act shall not apply to the city of London and the liberties thereof.

Ss. 6, 7, 8, and 13 not to apply to city of London.

XXVII. All the costs, charges, and expenses of and incident to the applying for, obtaining, and passing of this Act shall be paid by the Board.

Expenses of Act.

THE METROPOLITAN FIRE BRIGADE ACT, 1865

(28 & 29 Vict. c. 90),

establishes a Metropolitan Fire Brigade, under the control of the Metropolitan Board of Works, who are responsible for the protection of the metropolis against losses by fire, and have powers given to them to compel contributions to the support of the brigade. The sections of the 14 Geo. III. c. 87, which relate to the duty of parishes and others to provide against fires are therefore by this Act repealed.

I now give the Forms which are generally in use.

FORM No. 10.

Notice by Builder before Works are commenced, or on resumption of Works, or on change of Builder.

[*This Form is sanctioned by the Metropolitan Board of Works, and sealed as required by Section 59 of the Act*]

Metropolitan Building Act, 1855.

18 & 19 Vict. Cap. 122, Sec. 38.

To _____

(Seal) *Surveyor of the District of* _____

As the Builder engaged to execute the works under-mentioned, I hereby give you notice that, after two days from the date hereof, such works will be commenced, and will proceed with all due despatch.

The following are the particulars of such works :—

Situation of Building (or of each, if more than one) :—

Parish _____

Street _____

Number in Street (if any) _____

Description of Locality (if the site be vacant ground) _____

Intended use of Building, and Number of Buildings :—

Dwelling House _____

Warehouse _____

Public Building _____

Additions or Alterations to Buildings (if these are the subject of the notice) :—

To or upon Dwelling House _____

To or upon Warehouse _____

To or upon Public Building _____

Dimensions of Building (or of each, if more than one) :—

Area—

Depth _____ feet

Width _____ " }

Height _____

Number of Storeys _____

Owner :—

Name _____

Address _____

Date of Commencement of Works _____

Date of Notice _____ day of _____ 188

Signature of Builder _____

Address _____

[FOR NOTES SEE BACK.]

INSTRUCTIONS.

1. This form is intended to serve for new buildings; additions or alterations; resumption of works after suspension for three months; or change of builder.
 2. If additions or alterations are of different kinds, each kind should be stated.
 3. As to "area," it will be observed that the area is "the superficies of a horizontal section of the building made at the point of the greatest surface, including the external walls and such portions of the party walls as belong to the building, but excluding any attached building not exceeding the height of the ground storey." (Sec. 3.) The area of any attached building must, however, be given distinct with reference to charging the District Surveyor's fee. (*See Schedule.*)
 4. As to the "height," it is to be measured from the base of the wall (or the course immediately above the footings) to the level of the top of the topmost storey. (Schedule 1, Rule 6.)
 5. In so far as the Builder is careful in filling up this notice, he will find subsequent trouble to himself avoided in reference to the requisite survey by the District Surveyor.
 6. Works of emergency requiring to be done immediately may be begun if twenty-four hours thereafter notice be given. In that case the form would be varied as to the twenty-four hours instead of two days, and stating when the works were begun under the head of "commencement." (Sec. 44.)
 7. Seven days' notice of any new house or building has to be given to the Vestry or District Board under the Local Management Act (Sec. 76), and orders thereon as to drainage will be given within seven days after receipt of such notice.
- N.B.—For neglect in giving this notice a penalty of 20*l.* is imposed by Sec. 41.
- The term "Builder" includes the Master Builder or other person employed to execute, or who actually executes, any work upon any building. (Sec. 3.)

FORM No. 11.

Notice of irregular Works by District Surveyor to Builder.

[This Form is sanctioned by the Metropolitan Board of Works, and sealed as required by Section 59 of the Act.]

Metropolitan Building Act, 1855,
18 & 19 VICT. Cap. 12, Sec. 45.

(Seal) DISTRICT SURVEYOR'S OFFICE.

To Mr. _____
of _____
Builder _____

~~22~~(11) reference to the works at the building undermentioned and now in progress under your superintendence, as Builder engaged in executing the same, I hereby give you notice, that they are not conformable to the rules of the Building Act in the particulars hereunder stated, and I require you, within forty-eight hours from the date hereof, to render the same conformable to the rules of the said Act in such particulars.

Building referred to :—

Situation of Building :—

Parish _____
Street _____
Number of Street (if any) _____
Description of Locality (if the site is vacant ground) _____

Particulars of Work done CONTRARY to the Act, and to be amended :—

Particulars of Work required to be done by the Act, but OMITTED and now to be done :—

Particulars of Work to be cut into, laid open, or pulled down, to ascertain the nature of the works executed :—

Dated this _____ day of _____ 18 _____

Signature of District Surveyor _____

District of _____

NOTES.

1. This is a form for notice of irregularity under § 45, to be served by the District Surveyor on the Builder.
2. It may be used when any work is *done contrary* to the Act, or anything required is *omitted*, or when any work is to be *cut into, laid open, or pulled down*.
3. In each of these cases, what the rule of the Act requires should be briefly stated, so as to convey a clear meaning, and the nature of the work done or omitted should then be specified, with such indications of position and extent as to leave no doubt ; and this is the more requisite as, on complaint to the Magistrate, he may order the requisitions of the notice to be complied with, or any one of them that may in his opinion be authorised by the Act.

FORM No. 12.

Primary Notice in regard to Party Structure.

[This Form is sanctioned by the Metropolitan Board of Works, and sealed as required by Section 59 of the Act.]

Metropolitan Building Act, 1855,

18 & 19 Vict. Cap. 122, Sec. 38 (Party Structures).

(Seal) To _____
of _____
or whomsoever it may concern.

With reference to the Party Structure undermentioned, I hereby give you notice that, after the lapse of three months from the date hereof, I intend to exercise the right given me by the Metropolitan Building Act, by executing the Works undermentioned:—

Building referred to and Date of Erection (Sec. 83):—

Dwelling-house _____
Warehouse _____
Public Building _____

Situation of Building:—

Parish _____
Street _____
Number in Street (if any) _____

The part of the Building referred to is that wall or structure which separates the Building from the Building on the _____ thereof, and being No. _____ in the said Street.

Nature of the proposed Work:—

Time within which consent to the above is to be expressed, or after which dissent will be inferred:—

Fourteen days from the delivery hereof.

Surveyor appointed by me to superintend the work, and to settle on my behalf all matters of difference which may arise in relation thereto:—

Name _____
Address _____

Date of Notice _____ day of _____ 18 _____

Signature of Building Owner _____

Address _____

[FOR NOTES SEE BACK.]

INSTRUCTIONS.

1. This Form, as the primary notice in regard to party structures, may be given by the building owner to the adjoining owner, by delivering it to him personally, or by sending it by post in a registered letter, addressed to him at his last known place of abode.
 2. The date of erection of the building has relation to the Act under which it was erected, as the building is deemed conformable with the existing Act, if erected conformable with the Act in operation at the time.
 3. A marginal sketch of the building is often of use in assisting the description of the situation, &c.
 4. The work to be executed will be stated according to § 83, and may be in some of the following terms:—
 - (a.) "To make good or repair such wall [or 'party structure,' *if not clearly a wall*] in such parts as may on survey be found defective or out of repair; and to perform any other necessary works incidental thereto."
 - (b.) *Or* "To pull down and rebuild such wall, if on survey to be found so far defective or out of repair as to make such operation necessary or desirable; and to perform any other necessary works incidental thereto."
 - (c.) *Or* "To pull down the said timber partition, and to build instead thereof a party wall; and to perform any other necessary works incidental thereto."
Or "To pull down the partition that divides the said buildings on the side that is not conformable to the regulations of the Act, and to build instead a party wall, and to perform any other necessary works incidental thereto."
 - (d.) *Or* "To pull down the rooms or storeys of the said building which are inter-mixed property (as shown on the annexed drawings), or part thereof, and to rebuild the same in conformity with the Act; and to perform any other necessary works incidental thereto."
- N.B.—If the drawings are given they should not exceed the size of foolscap paper, and to be an eighth, or other conveniently small scale.
- (e.) *Or* "To pull down the arch or communication over the public way or passage on the side of the said building (as shown on the annexed drawing), or part thereof, and to rebuild the same to conformity with the Act; and to perform any other necessary works incidental thereto."
 - (f.) *Or* "To raise the said party structure; and to perform any other necessary works incidental thereto."
Or "To raise the external wall built against the wall of the said building; and to perform any other necessary works incidental thereto."
 - (g.) *Or* "To pull down the said party wall which is of insufficient strength for the intended building on the thereof, and to rebuild the same of sufficient strength for such purpose; and to perform any other necessary works incidental thereto."
 - (h.) *Or* "To cut into the said party structure (as shown in the annexed drawing) for the purpose of and to perform any other necessary works incidental thereto."
 - (i.) *Or* "To cut away the footings or [chimney breast] [jambs] or [flues] projecting from the said party wall (as shown in the annexed drawing), in order to erect an external wall against such party wall [or for any other purpose]; and to perform any other necessary works incidental thereto."
Or State any other purpose, according to the fact.
 - (k.) *Or* "To cut away or to take down such parts of the wall of the adjoining building (as shown on the annexed drawing) as may be necessary in consequence of such wall overhanging my ground, in order to erect an upright wall against the same; and to perform any other necessary works incidental thereto."
- The time for consent and the naming of a surveyor are embodied in this notice, as thereby the requisite proceedings will be cleared and shortened.

Form No. 13.

Party Structure—Requisition to execute Works.

[This form is sanctioned by the Metropolitan Board of Works, and sealed as required by Section 59 of the Act.]

Metropolitan Building Act, 1855.

18 & 19 Vict. Cap. 122, Sec. 84 (Party Structures).

To Mr. _____

(Seal) of _____
or whomsoever it may concern.

With reference to the Notice of Works to be executed by you on the Building undermentioned, and served upon me the _____ day of _____, I hereby require you, for my convenience, to execute the works undermentioned:—

Building referred to:—

Dwelling-house _____

Warehouse _____

Public Building _____

Situation of Building:—

Parish _____

Street _____

Number in Street (if any) _____

Nature of the Work required by adjoining Owner:—

Time for commencement of Work:—

As the time specified in your Notice will cause me unnecessary inconvenience, I require you to delay the works until the _____ day of _____

Time within which your consent to the above is to be expressed, or after which dissent will be inferred:—

Fourteen days from the delivery hereof.

Surveyor appointed by me to superintend the work, and to settle on my behalf all matters of difference that may arise in relation thereto:—

Name _____

Address _____

Date of Notice _____ day of _____ 188 _____

Signature of Adjoining Owner _____

Address _____

INSTRUCTIONS.

1. The adjoining owner may serve this notice or requisition either on receipt of that of the Building Owner or within one month thereafter; and the service must be by delivery personally to the Building Owner, or by sending it by post in a registered letter addressed to him at his last known place of residence.
2. The work required for the adjoining owner's convenience will be stated according to Sec. 84.
 - (a.) "To build chimney jamba, breasts, or flues on such parts of the party structure as are shown on the drawings hereunto annexed."
 - (b.) Or "To build piers [or recesses] on such parts of the party structure as are shown on the drawings hereunto annexed."
 - (c.) Or any other like works.
3. By Sec. 87, the adjoining owner may require security from the Building Owner before commencing any work; but as that must be special and a matter of agreement, or adjustment on difference, it is not introduced into the general form.

FORM No. 14.

Summons for Penalty for Neglect of giving Notice of Works.

THE METROPOLITAN BUILDING ACT, 1855,

18 & 19 Vic. c. 122, s. 41.

Metropolitan
Police District }
to wit.

To _____
of _____

~~Whereas~~ complaint hath this day been made before the undersigned,
one of the Magistrates of the Police Courts of the Metropolis, sitting at
the _____ in the County of

and within the Metropolitan Police District, by
of

in the County of
day of

for that you on the
in the year of Our Lord One Thousand

Eight Hundred and Eighty

being the Builder engaged in

erecting,—doing certain work to, in, and upon—a Building,

situate

in the Parish of

in the County of

and within the said District, and within the limits of the Metropolitan
Building Act, 1855, and within the District of

of which he the said

is the District Surveyor, under the said Act, DID neglect to give to the
said _____ as the District Surveyor, Two

Days before such Building—Work—was commenced, due notice in writing
stating the situation, area, height, and intended use of the Building about
to be commenced—to, in, or upon which certain work was to be done—and
other the particulars of such proposed work, and stating your Name and
Address, BUT DID execute such work before giving any such notice,
contrary to the statute in that case made and provided. Whereby you, as
such Builder, have for such offence incurred a penalty not exceeding
Twenty Pounds.

THESE ARE THEREFORE TO COMMAND YOU in Her Majesty's name to be
and appear on _____ the
day of _____ at _____ of the Clock in the

noon, at the Police Court aforesaid, before me, or such other
Magistrate of the said Police Courts as may then be there, to answer to
the said complaint, and to be further dealt with according to law.

Given under my Hand and Seal this
day of _____,
in the Year of our Lord One Thousand
Eight Hundred and Eighty
at the Police Court aforesaid.

FORM No. 1.

Registered No. _____

Notice of Dangerous Structures.

Metropolitan Building Act, 1869.

Metropolitan Board of Works.

Notice of a Dangerous Structure.

_____ day of _____ 188 _____

TO THE METROPOLITAN BOARD OF WORKS.

I HEREBY give you information that a certain Structure, situate and
known as No. _____
Street _____
_____ in the Parish
of _____ in the County
of _____ is in my opinion in a dangerous
state, and request that the same may be dealt with by you according to
Statute.

Name _____

Address _____

SUMMONS.
Form No. 5.

Registered No. _____

Metropolitan Board of Works.

Dangerous Structures.

18 & 19 VICT. Cap. 122, Part 2, and 32 & 33 VICT. Cap. 82, 1869.

Police Court.

To the* _____ of the Structure situate or known as _____
_____ or "Owner"
_____ or "Occu-
_____ pier," as the
_____ case may be.

in the Parish of _____
in the County of _____ (Metropoli-
tan Police
District, to
wit.

WHEREAS the Metropolitan Board of Works, acting in the execution
of the Metropolitan Building Act, 1869, hath this day by _____
duly appointed by the said Board to act in that behalf, made complaint to
the undersigned, one of the Magistrates of the Police Courts of the
Metropolis sitting at _____

_____ in the County of _____
and within the Metropolitan Police District, that having caused a Survey
to be made of the said Structure by a competent Surveyor, the said Struc-
ture hath been duly certified to him as being in a dangerous state, and
that the said Board having caused notice in writing to be given to you the
said _____ requiring you to _____

you have failed to comply with the requisition of such Notice as speedily
as the nature of the case permitted, contrary to the statute in that case
made and provided :

THESE ARE THEREFORE TO COMMAND YOU in her Majesty's Name, to be
and appear on _____ next, at _____ o'Clock in the
noon, at the Police Court aforesaid, before me or such other Magis-
trate of the said Police Courts as may then be there, to answer the said
Complaint _____
and to be further dealt with according to Law.

Given under my Hand and Seal, this _____ day
of _____ One Thousand Eight
Hundred and _____ at the Police Court aforesaid.

Order to Secure Building.
Form No. 7.

Registered No. _____

Metropolitan Board of Works.

Police Court.

DANGEROUS STRUCTURES.

18 & 19 VICT. Cap. 122, Part 2, and 32 & 33 VICT. Cap. 82, 1869.

* "Owner"
or "Occu-
pier," as the
case may be.

To the* _____ of the Structure known as No. _____

*Metropoli-
tan Police
District,
to wit.*

in the Parish of _____
in the County of _____ within the said
District.

WHEREAS, on the _____ day of _____
in the Year of our Lord One Thousand Eight Hundred and _____
Complaint was made before _____
Esquire, one of the Magistrates of the Police Courts of the Metropolis,
sitting at the Police Court aforesaid, in the said County and District, by
the Metropolitan Board of Works, acting in the execution of the Metro-
politan Building Act, 1869, That on the _____ day of _____
in the Year of our Lord One Thousand Eight
Hundred and _____ it had been made known to the said Board
that the Structure known as _____

in the Parish of _____
in the County of _____ within the
said District was then in a dangerous state, and that they had caused a
Survey to be made of the same by _____
a competent Surveyor in that behalf. That he, the said Surveyor, had
certified his opinion to the said Board that the said Structure was then in
a dangerous state, and that the said Board had then caused to be given to
you the _____ of the said Structure a Notice in
writing requiring you as such _____
to _____

and that you had failed to comply with the requisition of such Notice as
speedily as the nature of the case permitted.

And now at this day in pursuance of a Summons issued by the said Magistrate upon such Complaint

_____ appear before me, the undersigned Magistrate of the Police Courts of the Metropolis, sitting at the Police Court aforesaid

Blank to be filled up in case of non-appearance, with statement of non-appearance, and proof of the non-appearing party having been summoned.

and I, having heard upon Oath the matter of the said Complaint, do adjudge the said Complaint to be true, and that the

[and which are mentioned in the said Notice of the said Board] _____ in a dangerous state, and I do hereby order you, the said

The words within Brackets may be struck out if the entire Structure is ordered to be taken down, but retained if only parts of the Structure are to be taken down.

_____ to _____

or otherwise secure the same to the satisfaction of _____

_____ being the Surveyor appointed by the said

Board in this behalf within _____

from the service of this Order.

Given under my hand and seal, at the
Police Court aforesaid, this _____
day of _____ One
Thousand Eight Hundred and _____

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